



**THE LAW OF  
COMMERCIAL PAPER**





COMMERCIAL EDUCATION SERIES

# THE LAW OF COMMERCIAL PAPER

PREPARED IN THE  
EXTENSION DIVISION OF  
THE UNIVERSITY OF WISCONSIN

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# THE LAW OF COMMERCIAL PAPER

## CHAPTER I

### INTRODUCTION

Section 1. Negotiable promissory notes and bills of exchange are the only kinds of Commercial Paper. There are no other kinds. There are a great many different forms which negotiable bills and notes may take, some of which have special names, as, for example, the bank check, which is perfectly familiar; but when the several varieties of negotiable or commercial paper are analyzed, they will be found to be either bills of exchange or promissory notes. Therefore, in our general discussion we shall speak of bills and notes without mentioning special forms.

These forms will be referred to constantly throughout the text.

#### Form 1

---

\$900.00	Boston, Mass. January 31st, 1917.
Four months .....	after date .... I promise to pay to
the order of.....	William R. Carpenter.....
Nine Hundred .....	Dollars.....
at Ninth Ward Bank.....	
Value Received	
No..... Due.....	<i>Sam'l F. Orin</i>

---

## 2 THE LAW OF COMMERCIAL PAPER

The preceding is the ordinary form of a negotial promissory note. The form below gives the ordinary form of exchange.

### Form 2

\$1729.00 Philadelphia, Pa. Jan. 31st, 1917.  
Two months after date.....Pay to the  
Order of.....Wm. R. Carpenter.....  
Seventeen hundred twenty-nine.....Dollars  
Value received and charge the same to account of.....  
To Joseph M. Bride  
Belfast, Ont.

*James Hilton*

**Distinction between bills and notes and Common Law debts.**—Section 2. Looking at Form 1, above, let us suppose that Cridler owed Carpenter \$900 before Cridler made and delivered the promissory note given in the form. How do Carpenter's rights against Cridler to collect the \$900 before the note is given differ from his rights after the note is delivered? If they are different, why should they be? Did not Cridler owe Carpenter the money just as much before the note was delivered as afterward?

Why should the mere form of the obligation make any difference? That Carpenter has different rights on the note than he had on the debt before the note was delivered is perfectly well settled. The reason is that the law distinguishes between ordinary debts and obligations to pay money on negotiable instruments.

**Bills and notes are transferable; ordinary debts are not.**—Section 3. This distinction is not the result of arbitrary decisions of courts of law or of legislative action, but is because Mercantile or Commercial Law, a branch of which

is the Law of Commercial Paper, had an origin and growth apart from the general law called the Common Law. As Scrutton tells us in the extract from his book quoted below, in origin the rules of the Law of Commercial Paper were nothing more than statements of the usual practice of merchants in dealing with instruments in the form of bills of exchange and promissory notes; and it is only within the last 200 years that the courts have recognized and enforced those rules, thereby transforming them into law. It is not surprising, therefore, to find that that part of the law dealing with bills and notes is based upon conceptions quite antagonistic to the ordinary working principles of the Common Law. One of these is the conception of a bill of exchange or a promissory note as a kind of property which may be transferred by its owner to another. The quality of transferability is one of the qualities described when we say that bills and notes are negotiable. But are not all kinds of property transferable? Let us see. I may transfer my horse to you by the voluntary act of delivery coupled with an intention to make you the owner. I may transfer my land, or any interest therein, by the intentional delivery of a deed evidencing the transfer to you. But suppose Jones is indebted to me on a promise either oral or in writing to pay me \$100, and I wish to transfer the obligation to you; may I do so? This question is answered conclusively by the Common Law in the negative. A debt is not transferable property. There is no way in which I can divest myself of my right against Jones except, of course, by the release of Jones, which results in the extinguishment of the right itself.

Now to return to our case. Before Cridler gave Carpenter the note, Carpenter's right against the former to the money due was not transferable. He was entitled to collect the \$900 either personally or by his agent, but he could

not effectively part with his right to the money either way of gift or sale. After the note was given, Carpen might sell or give away his rights against Cridler on as freely as he might give or sell his horse or land.

**Illustrations. Practical importance of rule that bi and notes are transferable.**—Section 4. The practical consequences of the rule that Commercial Paper is transferal can not be overestimated. For example, suppose Carpenter sells and transfers by deed his house and lot to Cridler, w promises to pay \$900 therefor, giving Carpenter a memorandum in writing of the promise as follows: "For t house and lot this day sold me, I owe you \$900. (Sgd Dan'l. F. Cridler." It subsequently transpires that Carpenter did not own the premises, so that Cridler got nothing for his promise. If Carpenter sues Cridler on h promise, Cridler has a perfectly good defense, although h made the promise to pay \$900. It would be unjust to compel him to fulfill it when he has not received the land. And even if Carpenter had sold his rights against Cridle to a third person, Holden, who paid Carpenter \$900 i good faith therefor, knowing nothing of the fact that th premises had not belonged to Carpenter, in a suit instituted by Holden against Cridler to recover on his promise to pay \$900, Cridler would have the same defense he had when the suit was brought by Carpenter, and Holden could recover nothing. Unless Holden could get his money back from Carpenter, Holden would be out \$900.

But suppose Cridler, instead of giving the memorandum set out above to Carpenter, had given him the instrument in Form 1, and that Carpenter, as before, had sold his rights against Cridler to Holden for \$900 and transferred the instrument to him, Holden paying the \$900 in good faith, knowing nothing of the defense that Cridler had

against Carpenter because he did not own the premises which he purported to sell. Holden then sues Cridler for the \$900. In such a case Cridler has no defense but must pay Holden the \$900, although he received absolutely nothing for the money. In this case Cridler would be out \$900 unless he could recover from Carpenter.

Why has Cridler a defense in the last case but not in the preceding? In both Cridler received nothing for his promise; in consequence he could have successfully defended a suit brought by Carpenter. In both Holden innocently paid Carpenter \$900 for his rights against Cridler. The distinction between the cases lies in the difference between the obligations assumed by Cridler to Carpenter. In the former case Cridler's promise was a simple promise deriving its force and effect from the Common Law; in the latter the instrument which Cridler gave Carpenter was Commercial Paper embodying an obligation the nature of which depends, not upon the common or general law, but upon the Mercantile Law.

According to the common or general law, obligations to pay money or debts are not transferable, but according to the Mercantile Law, obligations or debts embodied in Commercial Paper are transferable. This explains the two cases we have been discussing. In the first, Carpenter could not recover from Cridler the \$900 because of the injustice of compelling Cridler to pay when he had received nothing. Nor could Holden enforce Cridler's promise even after he (Holden) had paid \$900 for it in perfect good faith. As we have seen, Carpenter's right against Cridler on his promise was not transferable. All that Holden got from Carpenter was a right to enforce Carpenter's rights as his (Carpenter's) agent. But Cridler had a defense against

Carpenter. And this defense, good against Carpenter, of course, good against anyone acting for Carpenter his behalf as his agent.

In the second case, Cridler gave Carpenter a promise embodied in a negotiable promissory note—a transferable obligation. When Holden bought from Carpenter the promise of Cridler, he became, not a mere agent of Carpenter but the owner of the note. When Holden sued Cridler he sued as the owner of the promise he is seeking to enforce. Did Cridler make the note? Yes. Was the note a valid legal note in the hands of Carpenter? Yes; Cridler intentionally made and delivered it to Carpenter. Is there any reason why *Carpenter* should not enforce it? Yes; he did not own the land he purported to sell, and in consequence Cridler got nothing for his promise. It is, therefore, *unjust for Carpenter* to compel Cridler to pay. Is there any reason why Holden should not be allowed to enforce the promise? No. Holden has become the owner of Cridler's promise to pay \$900. He purchased it in good faith without knowledge of the facts as to the land from Carpenter who owned the note and paid \$900 for it. Under such circumstances there is no injustice in permitting Holden to exercise the legal rights he has bought innocently.

That the difference in Holden's position in these two cases depends upon the fact that the Commercial Paper obligation is transferable, and that the Common Law obligation is not, is made more clear by the following case: Cridler is induced by fraud and deceit to sell his horse to Carpenter, who in turn sells the horse to Holden, who pays full value for it, and knows nothing of the fraud. Cridler sues Holden to recover the horse. He cannot recover because horses are transferable and by the intentional delivery Car-

penter became the owner. The sale by Carpenter to Holden transferred the ownership to the latter. Since Holden acquired the ownership innocently and for value, there is no reason in justice why he should be compelled to relinquish it to Cridler. Of course, Cridler could have recovered the horse from Carpenter so long as it remained in his possession, for even though Carpenter had become the owner by the intentional delivery from Cridler, still obviously justice would require him to restore the horse to the party from whom he had secured it by fraud.

This discussion has shown the practical importance of the rule of Mercantile Law which gives Commercial Paper its quality of transferability. It now remains to consider another attribute which together with that of transferability completes the usefulness of Commercial Paper as a medium of exchange and of credit.

**Bills and notes differ from Common Law debts not only in being transferable, but in that they are transferred by a mere change in possession.**—Section 5. We have seen that the obligation embodied in Commercial Paper, although unlike Common Law obligations or debts, is like tangible property, e. g., horses and land, in that it is transferable. But Commercial Paper also differs from other transferable property in the way in which it is transferred. The usual mode of transferring title to goods is by a voluntary delivery, i. e., voluntary actual transfer of the goods, coupled with the intention to make the transferee the owner. The common mode of transferring land is by a voluntary delivery of a deed with an intention to vest title in the grantee. Thus a mere delivery, i. e., an involuntary change in the actual possession of the goods or of the deed without an intention to pass title, would be ineffective. For example, A, with force and without X's consent, takes X's horse out



of his possession, i. e., steals it. The physical act of delivery is just as complete as if X had given his consent to the transfer of possession, but A does not become the owner because the necessary element of intention is absent. The same would be true if A stole from X a deed reciting a transfer of the land to A. But the obligation embodied in Commercial Paper differs quite as completely in the manner of its transfer from other kinds of transferable property, as it does from the ordinary Common Law debt obligation to pay money, in being transferable at all. Commercial Paper is transferable by a mere transfer of the instrument, whether voluntary or involuntary, intentional or unintentional. Thus, if X owned a note and A stole it from X, the title of the note would vest in A. Of course A would not be allowed to enforce the obligation, and would be compelled to return the note to X, but this is because of the manifest injustice of allowing him to keep it or assert his right upon it, not because he has not become the owner. In consequence, if A, the thief, sells the note to B, who knows nothing of the theft, B, having become the owner for value and without notice, may exercise the right of ownership he has acquired from A, by holding and collecting it, or further, transferring it. Contrast this with the case where A steals X's horse, and then sells the horse to B, who is innocent of the theft. Here B, notwithstanding his innocence and the fact that he paid a full price to A, has no rights whatever in the horse. The reason is obvious: A by the theft of the horse did not become the owner; the transfer of possession from X to A, the delivery, was involuntary and not coupled with an intention on X's part to make A owner. The horse never became the property of A, and B could not become the owner by a transfer from A, to whom the property did not belong.

**Summary.**—Section 6. Bills of exchange and promissory

notes, then, differ from Common Law obligations to pay money in that bills and notes are transferable. They differ from other kinds of transferable property, as goods and land, in that they are transferable by an involuntary delivery or change of possession. These two qualities are what give Commercial Paper the name of *negotiable* instruments. In their character as negotiable instruments they are like money, and it is their similarity to money which makes them of so much practical value in the business world.

**History of Mercantile Law.**—Section 7. We may well pause at this point to answer the question, "What is this Law Merchant, or Mercantile Law, which differs so radically in its rules with respect to Commercial Paper from the common or general law of obligations to pay money or debts?" If we answer that it is simply a statement or formulation of the customary way in which business men deal with Commercial Paper, the question remains, "How did the usage of merchants come to be enforced in the courts side by side with the common or general law?"

Scrutton in his "Elements of Mercantile Law" (Chapter I) outlines the history of the Law Merchant and its transition into law as follows:

"If you read the law reports of the seventeenth century you will be struck with one very remarkable fact: either Englishmen of that day did not engage in commerce, or they appear not to have been litigious people in commercial matters, each of which alternatives appears improbable. But it is a curious fact that one finds in the reports of that century, two hundred years ago, hardly any commercial cases. If one looks up the Law of Bills of Exchange, 'the cases on the subject are comparatively few and unimportant till the time of Lord Mansfield.' . . .

"The reason why there were hardly any cases dealt with commercial matters in the Reports of the Common Law Courts is that such cases were dealt with by special courts and under a special law. That law was an old established law and largely based on mercantile customs. .

"Now if we follow the growth of this Law Merchant Mercantile Law, which was two hundred years ago so distinct from the Common Law, we find it in England going through three stages of development. The first stage may be fixed as ending at the appointment of Coke as Lord Chief Justice in the year 1606, and before that time you will find the Law Merchant as a special law administered by special courts for a special class of people.

"In the first place, as to the special courts. The greater part of the foreign trade of England, and indeed of the whole of Europe at that time, was conducted in the great fairs, held at fixed places and fixed times in each year, to which merchants of all countries came; fairs very similar to those which meet every year at the present time at Novgorod in Russia, and at other places in the East. In England, also, there were then the great fairs of Winchester and Stourbridge, and the fairs of Besancon and Lyons in France, and in each of those fairs a court sat to administer speedy justice by the Law Merchant to the merchants who congregated in the fairs, and in case of doubt and difficulty, to have that law declared on the basis of mercantile customs by the merchants who were present. You will find this court mentioned in the old English law books as the Court Pepoudrous, so called because justice was administered while the dust fell from the feet, so quick were the courts supposed to be. 'This court is incident to every fair and market because that for contracts and injuries done concerning the fair or market there shall be as speedy justice done for advancement of trade and traffic as the dust can fall from the feet, the proceeding

there being *de hora in horam* (from hour to hour).’ Indeed, so far back as Bracton in the thirteenth century, it had been recognized that there were certain classes of people ‘who ought to have swift justice, such as merchants, to whom justice is given in the Court *Pepoudrous*.’ The records of these courts are few, for obviously in courts for rapid business law reporters were rather at a discount. As a consequence, ‘there is no part of the history of English law more obscure than that connected with the maxim that the Law Merchant is part of the law of the land.’ We are, however, fortunate enough to have one or two records of the Courts of the Fairs. The Selden Society has succeeded in unearthing the Abbott’s roll of the fair of St. Ives held in 1275 and 1291, containing a series of cases which show how the merchants administered the Law Merchant in the Courts of the Fair, and why such cases did not come into the King’s Court. For instance, ‘Thomas, of Wells, complains of Adam Garsop that he unjustly detains and deforces from him a coffer which the said Adam sold to him on Wednesday next after Mid Lent last past for sixpence, whereof he paid to the said Adam two pence and a drink in advance’ (it appears to have been a very good mercantile custom, to ‘wet a bargain,’ and the drink was a matter to which great importance was attached by the merchants present); ‘and on the Octave of Easter came and would have paid the rest, but the said Adam would not receive it nor answer for the said coffer, but detained it unconditionally to his damage and dishonor, 2s., and he produces suit. The said Adam is present and does not defend. Therefore, let him make satisfaction to the said Thomas and be in mercy for the unjust detainer; fine 6d.; pledge his overcoat.’ The next defendant was not so fortunate as to have an overcoat. ‘Reginald Picard of Stamford came and confessed by his own mouth that he sold to Peter Redhood of London a ring of brass for 5½d.,

saying that the said ring was of the purest gold, and that he and a one-eyed man found it on the last Sunday in the churchyard of St. Ives, near the cross.' (One fancies one has heard that tale about the brass ring before.) 'Therefore it is considered that the said Reginald do make satisfaction to the said Peter for the  $5\frac{1}{2}$  d. and be in mercy for the trespass; he is poor; pledge his body.' The next case introduces the Law Merchant. 'Nicholas Legge complains of Nicolas of Mildenhall for that unjustly he impedes him from having, *according to the usage* of merchants, part in a certain ox which Nicolas of Mildenhall bought in his presence in the village of St. Ives on Monday last past to his damage 2s., whereas he was ready to pay half the price, which price was 2s. 6d. And Nicolas of Mildenhall defends, and says that the Law Merchant does well allow that every merchant may participate in a bargain in the butcher's trade if he claim a part thereof at the time of the sale; but to prove that the said Nicholas Legge was not present at the time of the purchase nor claimed a part thereof he **is ready to make law.**' Then they went to the proof. The custom of the Law Merchant relied on admitted any merchant standing by to claim a share in any bargain on paying a share of the price. The defense is, 'You were not there, so you cannot claim.' The next and last case is one which puzzled the court, and, therefore, I omit the details, but it is recited in the Abbott's roll: 'And the case is respited till it shall be more thoroughly discussed by the merchants. And the merchants of the various commonalties and others being convoked in full court it is considered'—and then they go on to discuss it. There you see the Merchant's Court at work, giving quick justice in all mercantile disputes, and in cases of doubt calling upon the merchants present to declare what the Law Merchant is. So much for the fairs.

"In most seaport towns also you will find a similar court

dealing with cases arising out of ships. In the Domesday Book of Ipswich it is stated, 'The pleas between strange folk that men call 'pypoudrous' should be pleaded from day to day. The pleas in time of fair between stranger and passer should be pleaded from hour to hour, as well in the forenoon as in the afternoon, and that is to wit of plaints begun in the same time of fair, and the pleas given to the law marine for strange mariners passing, and for them that abide not but their tide, should be pleaded from tide to tide.' Any ship coming into the port of Ipswich with a dispute about its Charter Party or Bill of Lading may get summary justice at once from this Court of Ipswich between tide and tide. Stress may be laid on the fact that the Courts sat in the afternoon, because at that time the King's Courts only sat from eight in the morning till eleven and then adjourned for the rest of the day. 'For in the afternoons these courts are not holden. But the suitors then resort to the perusing of their writings, and elsewhere consulting with the serjeants-at-law and other their counselors,' so that the time taken up in consultation by the Courts in London was taken up by the Courts at Ipswich in dealing summarily with cases, and letting the strange mariners go who were only waiting for their tide.

"There were special courts by statute, of which a number of 'grave and discreet merchants' were necessary members, in order that the Mercantile Law founded on the custom of merchants might be duly applied to the case before them. The law which these courts administered was what was called by merchants the Law Merchant and Law of the Sea, and it was common to nearly every European country. Much of it was to be found in a series of Codes of Sea Laws, such as the Laws of Oleron and Wisbury, and the Consolato del Mare, embodying the customs and practices of merchants of different countries, and it was not the Common Law of England. Further, it was only for

a particular class. You had to show yourself to be a merchant before you got into the Mercantile Court; and until about two hundred years ago it was still necessary to show yourself to be a merchant in the Common Law Court before you could get the benefit of the Law Merchant.

"Now the second stage of development of the Law Merchant may be dated from Lord Coke's taking office in 1606 and lasts until the time when Lord Mansfield became Chief Justice in 1756, and during that time the peculiarity of its development is this: That the special courts die out, and the Law Merchant is administered by the King's Courts of Common Law, but it is administered as a custom and not as law, and at first the custom only applies if the plaintiff or defendant is proved to be a merchant. In every action on a Bill of Exchange it was necessary formally to plead *secundum usum et consuetudinem Mercatorum*—according to the use and the custom of merchants; and it was sometimes pleaded that the plaintiff was not a merchant but a gentleman. And as the Law Merchant was considered as custom, it was the habit to leave the custom and the facts to the jury without any directions in point of law, with a result that cases were rarely reported as laying down any particular rule because it was almost impossible to separate the custom from the facts; as a result little was done towards building up any system of Mercantile Law in England.

"The construction of that system began with the accession of Lord Mansfield to the Chief Justiceship of the King's Bench in 1756, and the result of his administration of the law in the courts for thirty years was to build up a system of law as part of the Common Law, embodying and giving form to the existing custom of merchants. When he retired, after his thirty years of office, Mr. Justice Buller paid a great tribute to the service that he had done. In giving judgment in *Lickbarrow v. Mason*, he said:

‘Thus the matter stood till within these thirty years. Since that time the Commercial Law of this country has taken a very different turn from what it did before. Lord Hardwicke himself was proceeding with great caution, not establishing any general principle, but decreeing on all the circumstances put together. Before that period we find in Courts of Law all the evidence in mercantile cases was thrown together; they were left generally to the jury, and they produced no established principle. From that time we all know the great study there has been to find some certain general principle, not only to rule the particular case under consideration, but to serve as a guide for the future. Most of us have heard those principles stated, reasoned upon, enlarged, and explained till we have been lost in admiration at the strength and stretch of the human understanding, and I should be sorry to find myself under the necessity of differing from Lord Mansfield, who may truly be said to be the founder of the Commercial Law of this country.’ Lord Mansfield, with a Scotch training, was not too favourable to the Common Law of England, and he derived many of the principles of Mercantile Law that he laid down from the writings of foreign jurists, as embodying the custom of merchants all over Europe. For instance, in his great judgment in *Luke v. Lyde*, which raised a question of the freight due for goods lost at sea, he cited the Roman Pandects, the *Consolato del Mare*, laws of Wisbury and Oleron, two English and two foreign mercantile writers, and the French Ordinances, and deduced from them the principle which has since been part of the Law of England. While he obtained his legal principles from those sources, he took his customs of trade and his facts from Mercantile Special Juries, whom he very carefully directed on the law, and Lord Campbell in his life of Lord Mansfield has left an account of Lord Mansfield’s procedure. He says:



'Lord Mansfield reared a body of special jurymen at Guild hall, who were generally returned on all commercial case to be tried there. He was on terms of the most familiar intercourse with them, not only conversing freely with them in court, but inviting them to dine with him. From them he learned the usages of trade, and in return he took pains in explaining to them the principles of jurisprudence by which they were to be guided. Several of these gentlemen survived when I began to attend Guildhall as a student and were designated and honored as "Lord Mansfield's jurymen." One in particular I remember, Mr. Edward Vaux, who always wore a cocked hat, and had almost as much authority as the Lord Chief Justice Himself.'

"Since the time of Lord Mansfield other judges have carried on the work that he began, notably Abbott, Lord Chief Justice, afterward Lord Tenterden, the author of 'Abbott on Shipping'; Mr. Justice Lawrence, and the late Mr. Justice Willes; and as the result of their labors the English Law is now provided with a fairly complete code of mercantile rules."

**Mercantile Law adopted in United States.**—Section 8 From this outline it is clear that the Law Merchant affecting Commercial Paper was part of the law of England before the independence of the American Colonies, and has for the most part been adopted in bulk from the English law into the law of the several states of the United States.

**Bills of Exchange Act, 1882.**—Section 9. Until 1882 in England, and until later in the United States, the law of Commercial Paper could only be found in the reports of decisions of the courts. It was not set out authoritatively in any form easy of access.

"In 1882 the British Parliament passed an act entitled

'An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes,' better known by its authorized short title as the 'Bills of Exchange Act, 1882.' This act is, with certain exceptions, declaratory of the common law of England, or rather of the Law Merchant, as expounded by the authority of English law. The bill was drawn by Judge Chalmers, author of the excellent Digest of the law of bills, notes, and checks, an acknowledged expert on the subject, and submitted to recognized authorities on English Commercial Law and practice and finally settled by strong committees in Parliament. And so the act may be regarded for the main part and so far as the propositions contained in it are directly applicable as an authoritative declaration, under the sanction of the legislature, of the English law. The act was not intended to be merely a code of existing law. It was designed to alter and did alter the law in some respects. The act has been adopted by two-thirds of the total number of the various colonies and dependencies of the British Empire and by all the most important of them, but not without changes which, though trifling in themselves, are destructive of complete uniformity."

**Negotiable Instruments Law in United States.**—Section 10. In the United States "The desirability, if not the absolute necessity, of uniform laws relating to commercial paper had long been apparent to lawyers and laymen. The situation induced by conflicting decisions and statutes embarrassed business and interrupted that free circulation of Commercial Paper which is its distinguishing characteristic." . . .

"At the suggestion of the American Bar Association, and through its cooperation, commissioners for the promotion of uniformity of legislation in the United States were from

time to time appointed by the several states. In 1895 twenty-seven states had appointed such commissioners, and in August of that year the commissioners met in conference at Detroit, Michigan,—nineteen states being represented in the conference. At that conference a resolution was adopted requesting the committee on Commercial Law to procure as soon as practicable a draft of a bill relating to Commercial Paper, based on the English statute on that subject and on such other sources of information as the committee might deem proper to consult. The matter was referred to a subcommittee consisting of Lyman D. Brewster, of Connecticut, Henry C. Willcox, of New York, and Frank Bergen, of New Jersey. The subcommittee employed Mr. John J. Crawford of New York, who had made a special study of the law relating to Commercial Paper, to make a draft of the proposed law. The draft was prepared by Mr. Crawford and submitted to the conference of commissioners which met at Saratoga in August, 1896. The commissioners in attendance, being twenty-seven in all and representing fourteen different states, went over the draft, section by section, making amendments therein, most of which were changes in the existing law which Mr. Crawford had not felt at liberty to incorporate into the original draft. . . . This statute presents within narrow compass the law of negotiable bills of exchange, promissory notes, and checks. It is the result of two purposes; the first and controlling purpose was to make the law uniform, and whatever changes were necessary to be made to accomplish that purpose were accordingly made. The second purpose was to preserve the law as nearly as possible as it then existed. The work was committed to competent and experienced persons, well versed in the law relating to the subject. They were aided by the able work of those to whom had been entrusted the preparation of the Bills of Exchange Act. These facts are a guaranty that we have in the negotiable

instruments law the legislative expression of the law theretofore determined by the courts, through a long series of years and in a multitude of decisions, barring, of course, those conflicting decisions and diverse statutes which had led to embarrassment and confusion in the administration of the law of Commercial Paper. It may be said probably without serious question that, in the enactment of this statute, no essential features of the law of negotiable instruments as theretofore determined have been eliminated. What business needs is fixed and uniform rules to govern Commercial Paper. Such rules are now to be found in the negotiable instruments law." (Bunker, "Negotiable Instruments Law," Introduction.)

This statute, known as the Negotiable Instruments Law, was passed by the legislature of the state of New York in 1897. The Law has been adopted without substantial change in the District of Columbia and forty-four states, territories, and dependencies of the United States, a list of which, indicating the year of adoption, follows:

- Alabama (1907)
- Arizona (1901)
- Arkansas (1913)
- Colorado (1897)
- Connecticut (1897)
- District of Columbia (1899)
- Florida (1897)
- Hawaii (1907)
- Idaho (1903)
- Illinois (1907)
- Indiana (1913)
- Iowa (1902)
- Kansas (1905)
- Kentucky (1904)
- Louisiana (1904)

Maryland (1898)  
Massachusetts (1898)  
Michigan (1905)  
Minnesota (1913)  
Missouri (1905)  
Montana (1903)  
Nebraska (1905)  
Nevada (1907)  
New Jersey (1902)  
New Hampshire (1909)  
New Mexico (1907)  
New York (1897)  
North Carolina (1899)  
North Dakota (1899)  
Ohio (1902)  
Oklahoma (1909)  
Oregon (1899)  
Pennsylvania (1901)  
Rhode Island (1899)  
South Carolina (1914)  
South Dakota (1913)  
Tennessee (1899)  
Utah (1899)  
Vermont (1912)  
Virginia (1897-8)  
Washington (1899)  
West Virginia (1907)  
Wisconsin (1899)  
Wyoming (1905)

## CHAPTER II

### FORMAL REQUIREMENTS OF COMMERCIAL PAPER

**Section 1675-1 of the Negotiable Instruments Law prescribes formal requisites of bills and notes.**—Section 11. We have said that there are only two kinds of Commercial Paper, the negotiable promissory note and the negotiable bill of exchange. Forms 1 and 2 have been referred to in Section 1 as the usual or ordinary forms of bills and notes. But the almost endless variety of forms which such instruments may take and still be notes or bills makes it necessary to analyze their language with care in order to determine what are the exact formal requirements of a promissory note and bill of exchange. This the Negotiable Instruments Law does in § 1. (Read and study.)<sup>1</sup> Let us take up each of the given requirements one by one.

#### **Materials for writing.**—Section 12.

“An instrument to be negotiable . . . must be in *writing*.” Daniel in his work on “Negotiable Instruments” says:

“As to the material upon which negotiable instruments should be written, it does not appear to be necessary that the substance should be paper. It is conceived that they might be written on parchment, cloth, leather, or any other convenient substitute for paper. Whether a valid bill or note may be written upon metal, stone, or wood does not

<sup>1</sup>References to the Negotiable Instruments Law in the text refer to the Illinois Act, pp. 192-238.

seem to have been decided; but if it were distinctly proven that the instrument was intended as a bill or note, the substance could be no objection to its validity. But it is, of course, entirely out of the usual course of business; and it must rarely, if ever, occur that such a question is presented. Certainly, the courts would look with suspicion upon so peculiar an instrument; and its unusual form would, in itself, be a warning to all purchasers that they took it at their peril." (Vol. I, p. 97, § 77.)

"The writing may be executed by any instrument or tool sufficient for the purpose. Pen and ink are, of course, ordinarily used, but a writing in pencil is permissible, although not advisable. An instrument, every part of which, including the signature, is typewritten, or is printed, or one on which the signature is stamped, is perfectly valid. The practical disadvantage of typewritten and pencil instruments and signatures is their easy obliteration and alteration. Printed and stamped signatures, while not open to this objection, are more difficult to prove than a signature in the handwriting of the signer." Bills and Notes, Pope's Encyclopedia of Law, Vol. VIII.

**A note must contain a promise.**—Section 13. The second subdivision of § 1 provides that the instrument "*must contain an unconditional promise or order.*" If the instrument is a *note*, it must contain a *promise*; if a *bill of exchange*, an *order*. First, what is a promise? The usual form of promissory note reads "I promise to pay" (see Form 1). There can be, therefore, no question about its sufficiency. But it is not necessary to use the word promise. For example, the following instrument contains a promise and is a negotiable promissory note:

NATHANIEL O. WINSLOW, Cr.

By labor 16¾ days at \$4 per day,  
\$67.

Good to bearer.

(Sgd.) WM. VANNAH.

(Hussey v. Winslow, 59 Me. Reports 170.) The court said: "It would seem that the only possible construction which can be given to this instrument is, substantially, this: In consideration of 16¾ days' labor, performed by Nathaniel O. Winslow, at \$4 per day, amounting to \$67.00, I promise to pay him, or bearer that sum on demand. Signed, William Vannah. Here we have every element of a negotiable promissory note; a maker, a payee, a promise or engagement to pay a certain sum of money at a specified time, absolutely and unconditionally, and the word 'bearer' to make it negotiable."

**"Due bill" or written acknowledgment of a debt not a note.**—Then why is not the memorandum in Section 4 of the first chapter a promissory note? The reason is that, although it states that Cridler owes Carpenter \$900, there is no promise in the instrument by Cridler to pay. Nor is the admission equivalent to a promise. *I admit I owe you \$100* or *I owe you \$100* cannot be read *I promise to pay you \$100*. Of course, if I did owe you \$100 the law would compel me to pay, but this would be because I owed you the money regardless of whether I had promised to pay or not. Examples of written instruments which were held not to be notes for want of a promise are the following:

I owe my father £100. (1 Camp. 499)

Due Currier and Barker, \$17.14 (40 Conn. 349)

I. O. U., E. A. Gay, the sum of \$17.05 for value  
received (151 Mass. 115).



**Unless time of payment is specified in the instrument.**—But if to a written acknowledgement of a debt words indicating when payment of the debt is to be made are added, the instrument may be a promissory note. Thus, if Cridler had added to the memorandum referred to above (Section 4) *to be paid Jan. 1, 1911*, it would have been a promissory note. Other examples of this exception to the rule that a written admission of indebtedness is not a promissory note are the following:

- (1) Time check, No. 189. \$98.65. General Manager's Office, Hawkeye Gold Mining Co., Pluma, So. Dak., June 10, 1908. Due W. C. Robinson the sum of ninety-eight dollars and sixty-five cents (\$98.65), payable at this office, on the 20th day of June, 1893, to him or order. David Hunter, General Manager, by L. A. Fell (67 N. W. 618).
- (2) No. 959. Mississippi Union Bank.  
Jackson (Miss.), Feb. 8, 1840. I hereby certify that Hugh Short has deposited in this bank, *payable twelve months from 1st May, 1839*, with 5 per cent interest till due, fifteen hundred dollars, for the use of Henry Miller, and payable only to his order upon the return of this certificate, \$1,500.  
WILLIAM P. GRAYSON, Cashier. (13 How. 218).
- (3) Due John Allen, \$94.91, *on demand*. (5 Day 337).

In each of these examples the words which are in italics were those which made the instrument a promissory note.

**Or the words "or order" or "bearer" are employed.**—Another exception to the rule that mere written admissions of debts are not promissory notes is this: If the words *or order* or *bearer* are inserted, the writings may be negotiable promissory notes. Thus, *I owe Carpenter, or bearer, \$100, (Sgd.) D. L. Cridler*, is a note. Another example of such a note is the following:

Due I. Huyck *or order* the sum of \$3,928, for value received of him, and on settlement up to date.

(Sgd.) C. V. MEADOR. (24 Ark. 191).

We can then state the rule in this form. An instrument to be a promissory note must contain an express promise or words of the same meaning. A bare admission of a debt is not a note unless it specifies the time when payment will be made, or contains the words "or order" or "bearer," in either of which cases the admission is construed as importing a promise to pay.

**A bill must contain an order.**—Section 14. A bill of exchange must contain an order to pay. Another reference to Form 2 shows how the usual form of bill complies with this requirement. The first printed word in the form is "Pay." It is the imperative mood of the verb "to pay," and is a short way of saying, "I order you to pay," or "I command you to pay." An order imports a *right* to command and a *duty* to obey. In determining whether a direction is an order, it is of no consequence that the person giving the order has no right to command or that the person to whom the order is directed is under no duty. The test is: Does the direction on its face import such a right and duty? If it does, it is an order. The words in which the bill is phrased are unimportant so long as they amount to an order.

**Words of politeness in a bill.**—"It is not necessary that the words, literally taken, should be imperative; the language may be that of courtesy and politeness in form, as often it is, and yet be imperative in the eye of the law. Enough that the language used is an expression of the drawer's *will* that the money shall be paid" (Bigelow, "Bills and Notes," pp. 22-23). Thus the use of the word "please"

or other words of civility will not deprive a bill of its imperative quality. For example, "please pay," etc., makes a good bill of exchange. And the following is held sufficient: "Mr. Nelson will much oblige Mr. Webb by paying to J. Ruff, or order, 20 guineas on his account" (1 Esp. 129).

**A bill distinguished from a request.**—But an order must be distinguished from a request, which merely asks a favor and does not import a right to ask and a duty to obey. An instrument which simply requests payment is not a bill of exchange. For example, "Messrs. Songer,—Please to send £10 by the bearer, as I am so ill I cannot wait upon you. (Sgd.) Eliz. Wery.—is not a bill (1 Leach, Crown Law, 323). Nor is the following: "Mr. Little,—Please to let the bearer have £7, and place it to my account, and you will oblige, Your humble servant, (Sgd.) R. Stackford" (1 M. & M. 171).

**A bill distinguished from an authority to pay.**—Again, an order must be distinguished from an authority. A written authorization to a debtor to pay a third person, signed by the creditor, does not order the debtor to pay, but merely authorizes him to pay, and the third person to receive the money due. It is, therefore, not a bill of exchange. For example, "Dear Sir,—We hereby authorize you to pay on our account to the order of W. G.," etc., is not a bill (4 Ex. 200).

A good example of the rule that, so long as an instrument contains an order and not a mere request or authority, it may be a bill, notwithstanding words of politeness and an unusual form, is the following instrument:

## REQUIREMENTS OF COMMERCIAL PAPER 27

John Hilton, February 1, 1910.  
to Wm. R. Carpenter, M.D., Debtor  
To professional services .....\$50.00  
Madison, Feb. 15, 1910.

James A. McBride, Esq.:

Please pay the above bill on March 31, 1910.

JNO. HILTON.

Compare the above with Form 2, and notice that it is of the same legal effect.

**The promise or order must be unconditional.**—Section 15. According to § 1, subdivision 2, not only must a note contain a promise and a bill an order, but the promise or order, as the case may be, must not on its face be conditional. For example, if to the note in Form 1, the words, “if you (Carpenter) have delivered to me (Cridler) a deed for your house and a lot in Milwaukee,” were added after the word “Bank,” the instrument would not be a note. Or if in the bill in Form 2 the phrase “if you (McBride) owe me (Hilton) that amount two months from date” were inserted, the instrument would not be a bill. Again, if to the ordinary check were added the sentence, “The bank book of the depositor must accompany this order”—the provision usually found in orders drawn on savings banks—the order would not be a negotiable instrument (See 88 Me. 339). The reason for this rule is that instruments not to be paid until a condition has happened could be of little practical value in business. No one would buy such paper or accept it for a debt before the condition happened. As a consequence, in mercantile usage—the source of the law of Commercial Paper—they were not negotiable.

Daniel, in his “Negotiable Instruments,” gives many examples. He says: “The instrument must be payable un-

conditionally, and at all events, in order to be negotiable. If the order or promise be payable provided terms mentioned are complied with (as, for instance, that a railroad be built to a certain point by a certain time), it is not a bill or note; and likewise if payable provided a certain act be not done; or that a certain receipt be produced; or another person shall not previously pay; or provided a certain ship shall arrive; or provided the maker shall be able; or provided the maker shall live a certain time; or 'on account of contract when completed and satisfactory'; or 'provided one person shall first pay another a certain sum,' or upon any contingency. Sometimes a condition of time is expressed by the word 'when,' as 'when A shall marry'; 'when a certain suit is determined'; 'when a certain sale is made,' or 'certain dividends declared'; or 'upon completion of work to be done on a dwelling house'; or 'not to be paid unless I shall have the use of certain premises'; 'when a certain amount is collected'; or 'when the estate of M is settled up'; 'after arrival and discharge of coal by brig A'" (Vol. I, § 41).

**Happening of the condition does not cure.**—Section 16. Since the objection to such an instrument is that from its face it is impossible to tell whether it will ever have to be paid, the actual happening of the event upon which it is to be paid does not make the instrument good from that time. The instrument is still conditional on its face. Section 4, subdivision 4, of the Negotiable Instruments Law, provides: "An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect . . ."

**Instruments payable out of a particular or special fund are conditional.**—Section 17. "In accordance with these principles the character of the instrument as a bill

or note is destroyed if it be made payable expressly or by implication out of a particular fund; for its payment becomes then conditioned on the sufficiency of that fund, which may prove inadequate. Thus the insertion, in an order of A upon B to pay a certain sum, of the words 'on account of brick work done on a certain building,' or 'out of any money in his hands belonging to me,' have been held to imply contingencies, and to be nonnegotiable. So, also . . . where the words were added, 'out of rents,' 'out of avails, when received, on sale of logs,' 'out of my growing substance,' 'out of the net proceeds of certain ore,' or 'out of a certain claim,' 'out of a certain payment when made,' or 'the demand I have against the estate of A,' or 'out of my part of the estate of A,' or 'being the amount that came to you from B to me,' or 'out of the proceeds of A's bond,' or 'and deduct the same from my share of the profits of the partnership,' or 'and charge the same to our account for labor and materials, performed and furnished,' or 'on account of work done as per contract,' or 'out of amount due me on contract.' But a written promise to pay, one day after the promisor's death, \$2,000 for services rendered 'to be paid out of my estate,' would be a good note, because payable generally and not out of a particular fund" (Daniel, "Negotiable Instruments," Vol. I, § 50).

**Instruments where the particular fund is referred to as a source for reimbursement.**—Section 18. "But if a depositor having two accounts with a bank draws a check on the bank, 'Please pay A, or order, \$100 and charge account No. 1,' it is a negotiable instrument. The order is not in terms conditional upon the existence of money in the bank to the credit of the depositor, but is an imperative direction to the bank to pay A, or order, \$100. The words 'charge account No. 1' are simply an indication to the bank of the account to which the check is to be charged *after* it is paid.

The fact that the bank might not pay the check if the depositor's account was not good does not make the order conditional on its face, and the face of the instrument is controlling in determining its negotiability. This rule is illustrated in *Redman v. Adams*, 51 Me. 429, where the following order was held a bill:

Castine, Jan 5, 1860.

For value received please pay to order of G. F. and C. W. Tilden forty dollars, and charge same against whatever amount may be due me for my share of fish caught on board schooner *Morning Star*, for the fishing season of 1860.

Yours, etc.,

FRANK R. BLAKE.

To Messrs. Adams & Co.

Accepted to pay.—Adams & Co.

The court said: 'The order requires the drawees to pay to the order of G. F. and C. W. Tilden the sum of forty dollars, absolutely and without contingency. A means of reimbursement is indicated to the drawees in the words appended, "and charge the same against whatever amount may be due me for my share of fish; etc.," but the payment of the order is not made to depend upon his having any share of fish, nor is the call limited to the proceeds thereof.'

"An instrument in which A promises B 'to pay B \$50 of the \$100 which I owe you' is not conditional upon the existence of the debt, for the face of the instrument assumes its existence. It is very different from a promise to pay \$50 of the \$100 I owe you, *if* I owe anything. Upon this reasoning the following was held a bill:

'Mr. Brigham, Dear Sir: You will please pay Elisha Wells \$30, which is due me for the two-horse wagon bought last spring, and this may be your receipt.'

The order was an absolute one to pay a debt *stated* to be due. If it in fact appeared that Brigham did not owe the drawer of the order, still the order would be absolute on its face."

**Statement of transaction giving rise to the instrument.**

—Section 19. The statement in a bill or note of the transaction as a part of which the instrument was delivered does not make it conditional and, therefore, not a negotiable instrument. Nor does the statement of the consideration, that is, the statement of the promise or thing for which the bill or note was given, interfere with its negotiability. An example of this rule is the following instrument which was held a good promissory note notwithstanding the words italicized:

\$300

Chicago, Mar. 5, 1887.

On July 1, 1887, we promise to pay D. Dalziel, or order, the sum of three hundred dollars, *for the privilege of one framed advertising sign, size — x — inches, one end of each one hundred and fifty-nine street cars of the North Chicago City Railway Co., for a term of three months, from May 15, 1887.* Siegel & Cooper Co. (131 Ill. 569).

The Neg. Inst. Law, § 3, sums up the matter. (Read and study.)

**"As per contract."**—Section 20. Promissory notes sometimes have the words "as per contract" or similar words added to them, but they do not make such instruments invalid as notes. There is nothing in the words themselves to make the paper conditional on its face. Even if the contract referred to, when examined, provided that the note was not to be paid until certain work had been done, still the condition would not be on the face of the note. Thus the following instrument is a valid note:



London, 29th Oct., 1857.

I promise to pay to Mr. J. C. Saunders or his order, at three months after date, the sum of one hundred pounds, as per memorandum of agreement.

HENRY JOHN BARKER.

Payable at 105 Upper Thames Street, London.

(Ellis, B. & E. 459.)

Another example would be the note in Form 1 with this clause added: "This note is given in accordance with the terms of a certain contract under the same date, between the same parties" (108 Mich. 184).

Of course, a person who buys such an instrument must take notice that there is a contract or agreement under the terms of which the note may not be payable until a condition is fulfilled, and that the maker may have a defense on that ground. But since the condition is not on the face of the instrument, it is a valid negotiable note.

Notes such as we have been discussing should be carefully distinguished from instruments somewhat similar in appearance where, however, the condition does appear on the face. For example, if to Form 1 were added the words: "If the provisions of the contract this day made between us are fulfilled by you (Carpenter)." Here from the instrument itself it appears that payment is not to be made unless and until the "provisions of the contract" are performed.

**The promise or order must be to pay a "sum certain."**—Section 21. According to Section 1, subdivision 2, the instrument to be negotiable not only must contain "an unconditional promise or order"; but the "unconditional promise" or the "unconditional order" must be "to pay a sum certain." An example would be a note like that in Form 1 to which

was added: "and whatever other sums I owe you four months from date" (34 Me. 96).

**Interest.**—A stipulation for interest at a given rate, however, does not make the sum payable uncertain; for taking the data on the face of the note, i. e., the date when the principal sum is due, its amount, and the rate of interest, the amount of interest payable at maturity is a mere matter of computation. The same result follows if the promise is simply to pay interest, without specifying a rate, for the legal rate is then payable.

It is true if the instrument is not paid at maturity, that when, if ever, it will be paid is uncertain, and that in consequence the amount of interest finally payable cannot be ascertained from the instrument. This, however, is immaterial, for the canon of certainty refers to the *maturity of the instrument*. For the same reason it is held that bills and notes specifying different rates of interest before and after maturity are certain in amount. For example, the following is a valid note:

\$100

Good Thunder, July 24, 1882.

For value received on or before the first day of January, 1884, I, or we, or either of us, promise to pay to the order of D. M. Osborne and Co. the sum of one hundred dollars, at the office of Gebhard and Moore, in Mankato, with interest at ten per cent per annum from date until paid; seven, if paid when due.

J. B. CRANE.

On the same principle a stipulation to pay, in addition to principal and interest, costs of collection and attorney's fees, if the bill or note is not paid at maturity does not affect its negotiability. The sum payable at maturity is certain.

An exception to the requirement of certainty is based upon the commercial usage of making bills and notes payable at one place with exchange on another. This usage is recognized although its recognition is technically a violation. "With current exchange on New York City" is good.

A bill or note payable in installments, for example, \$100 in ten payments of \$10 each every 30 days, is unquestionably certain as to amount. So also is such an instrument which further provides that in case of a default in the payment of any installment, the whole amount shall at once become due.

Section 2 recapitulates for us the rules with respect to certainty of sum. (Read and study.)

**A bill or note must be payable in money.**—Section 22. If we turn again to § 1, subdivision 2, we find that the concluding words require that the unconditional order or promise must be to pay a sum certain "in money." Norton in his "Bills and Notes," referring to this requirement says: "Bills and notes, being representatives of money, must be payable in money. 'Money,' within this rule, means whatever may be used as legal tender for payment of debts at the place where the bill or note is payable. In the United States what is legal tender is determined by the 'Legal Tender Act.' Where there are several kinds of legal tender, as gold, silver, and notes, a bill or note may be made payable in either. But all other kinds of currency, whether coin or paper, are in law but 'collateral' commodities, like ingots or diamonds, which, though they might be received, and be in fact equivalent to money, are yet but goods. . . . For this reason an instrument which possesses all the other requisites of a bill or note is not such if the medium of payment be limited to what is not 'money.'"

"The real reason for the requirement that negotiable in-

struments must be payable in money obviously is that money is the one standard of value in actual business. All other commodities may rise and fall in value, but in theory, at least, money always measures this rise and fall, and remains the same. The chattel which is used as a means of payment may fluctuate in value. Thus, 'a note payable in neat cattle,' a promise to pay 'in a good horse, to be worth \$80 and goods out of store amounting to \$20,'—are non-negotiable. . . . There is one apparent deviation from the rule, which it is important to notice. Where a bill or note is expressed in money of a foreign denomination, it is still negotiable. The courts, under the statutes of the United States, will take judicial notice of the fact that the value of foreign coin, as expressed in the money of account in the United States, shall be that of the pure metal of such coin of standard value; and that the value of the standard coin of the various nations of the world in circulation is estimated annually by the directors of the mint, and proclaimed on the first day of January by the secretary of the treasury. These foreign denominations, therefore, can always be paid in our own coin of equivalent value, to which it is always reduced on a recovery. In an action upon such an instrument the course is to prove the value of the sum expressed in our own tenderable coin." (Pp. 43, 45, 46-47).

This "apparent deviation" from the rule is not a deviation at all. The rule is that a bill or note must be *payable* in money, that is, legal tender of the United States, and not that the sum to be paid must be expressed in money of the United States. Thus an English bill of exchange ordering payment of "£20 in New York City in United States money" is payable in United States money though the sum is expressed in English money, and is therefore a good bill. This explains also why negotiable instruments in which the *sum*

is expressed in foreign money without stating in what money payment is to be made, are good. In such instruments it is presumed that the parties intended payment to be made in the legal tender of the country where the instrument is to be paid, regardless of the kind of money in which the sum was expressed. For this reason the following is payable in United States money and, in consequence, is a valid note:

£ 20

Madison, Wisconsin, Jan. 1, 1910.

Ten days after date I promise to pay Wm. R. Carpenter or order £ 20 English.

D. F. CRIDLER.

A bill or note may specify the particular kind of legal tender in which it is to be paid. (See Neg. Inst. Law, § 6, subdivision 5, 1st sentence.) Thus a note may specify "U. S. gold eagles" or "U. S. silver dollars" as a medium of payment.

Section 23. Instruments like the certificates of deposit payable "in *current funds*" have caused much difficulty because of the doubt whether those words meant legal tender or not. Some courts have held they mean legal tender and that the instruments are valid bills or notes. Others have held that "current funds" includes not only money but also Commercial Paper which is current in business but is not legal tender. If read with this meaning the instruments are not bills or notes.

## CHAPTER III

### FORMAL REQUIREMENTS OF COMMERCIAL PAPER (*Continued*)

**The instrument must not contain an order or promise to do an act in addition to the payment of money.—**Section 24. Not only must a bill or note be for the payment of money, but it must not be coupled with an order or promise to do any act in addition to the payment of money. Thus a note containing a promise to pay \$100 on January 1, *and also* to deliver a horse to the payee on that date is not a valid negotiable instrument. Such an instrument is a hybrid between a promissory note and a Common Law contract containing two obligations, one to pay money, the other to deliver property. The Common Law obligation is not negotiable, and the instrument is not divisible, so the instrument as a whole is not negotiable.

If the instrument contained a promise to pay \$100 on January 1, *or* to deliver a horse on that date, it is not a promissory note. The reason here is that the promise is not an unqualified promise to pay money. It is a promise either to pay money or to deliver property as the maker chooses. But if the instrument contains a promise to pay money, *or at the option of the holder* of the instrument, to deliver property, it is held to be a good negotiable promissory note. In such a case the maker's promise to pay money is unqualified and unconditional, for according to its terms he must do so if the holder wishes. Upon this reasoning the following was held a promissory note:

Rutland and Burlington Railroad Company.

\$1,000

Boston, April 1, 1850.

No. 253.

In four years from date, for value received, the Rutland and Burlington Railroad Company promises to pay in Boston, to Messrs. W. S. & D. W. Shuler, or order, \$1,000, with interest thereon, payable semiannually, as per interest warrants hereto attached, as the same shall become due; or upon the surrender of this note, together with the interest warrants, not due, to the treasurer, at any time until six months of its maturity, he shall issue to the holder thereof ten shares in the capital stock in said company in exchange therefor, in which case interest shall be paid to the date to which a dividend of profits shall have been previously declared, the holder not being entitled to both interest and accruing profits during the same period.

T. FOLLET, President,

SAM. HENSHAW, Treasurer.

The Court said: "The instrument on which the action was brought has all the essential qualities of a negotiable promissory note. It is for the unconditional payment of a certain sum of money, at a specified time, to the payee's order. It is not an agreement in the alternative, to pay in money or railroad stock. It was not optional with the makers to pay in money or stock, and thus fulfill their promise in either of two specified ways; in such case, the promise would have been in the alternative. The possibility seems to have been contemplated that the owner of the note might before its maturity surrender it in exchange for stock, thus canceling it and its money promise; but that promise was nevertheless absolute and unconditional, and was as lasting as the note itself. In no event could the holder require money and stock. It was only upon a surrender of the note that he was to receive stock; and the money payment did not mature until six months after the holder's right to exchange the note for stock had expired.

We are of the opinion that the instrument wants none of the essential requisites of a negotiable promissory note. It was an absolute and unconditional engagement to pay money on a day fixed; and although an election was given to the promises, upon a surrender of the instrument six months before its maturity, to exchange it for stock, this did not alter its character, or make the promise in the alternative, in the sense in which that word is used respecting promises to pay. The engagement of the railroad company was to pay the sum of \$1,000 in four years from date, and its promise could only be fulfilled by the payment of the money, at the day named" (*Hodges v. Shuler*, 22 N. Y. 114).

**Incidental and subsidiary clauses not destroying negotiability.**—Section 25. "But while an instrument which incorporates with the order or promise to pay an agreement to do some other act is not a bill or note, it is possible, without destroying the negotiability of a bill or note, to annex to it an agreement which relates to it, but which is merely incidental. The point to determine is whether such agreement is a part of or necessary to the fulfillment of the promise or order. If it is not, it does not destroy the instrument's negotiability. . . .

"In conformity with the rule that a mere incidental agreement, which is collateral to the order or promise to pay, does not render it nonnegotiable, it is generally, though by no means universally, held that an instrument is none the less negotiable because it contains provisions, to take effect if it is not paid at maturity, (1) authorizing the holder to confess judgment for the maker; or (2) waiving defenses, or the benefit of stay or exemption laws; or (3) promising to pay costs of collection and attorney's fees. It was said by Gibson, C. J., in a case which held that power to confess judgment and waiver of stay of execution and



appraisement rendered a note nonnegotiable, that 'a negotiable bill or note is a courier without luggage,' and that 'the parties could not have intended to impress a commercial character on the note, dragging after it, as it would, a train of special provisions, which would materially impede its circulation.' But in answer to this objection it has been well said that such provisions do not impede, but aid, the circulation. While in answer to another objection, which has been urged, that a provision for payment of costs and attorney's fees renders uncertain the amount to be paid, it is a sufficient answer that, the amount payable at maturity being certain, a promise to pay an additional, even if uncertain, amount in case of nonpayment at maturity, after which time the instrument necessarily ceases to be negotiable, does not impair its negotiability" (Norton, "Bills & Notes," pp. 48, 50-51).

§ 5 of the Negotiable Instruments Law states the rules we have discussed. (Read and study.)

**Must be certain as to time of payment.**—Section 26. An instrument to be a promissory note or bill of exchange must be certain as to the time of payment. The usual form of instrument is clearly certain. (See forms 1 and 2 in Chapter I.) The following instruments are just as clearly uncertain:

Jan. 1, 1910.

Ten days after my coming marriage, I promise to pay Wm. R. Carpenter or order, \$100.

DAN'L F. CRIDLER.

Jan. 1, 1910.

I promise to pay Wm. R. Carpenter or order \$100 on the day he becomes 21 years old.

DAN'L F. CRIDLER.

Carpenter may never attain 21 and Cridler may never marry. In consequence the time of payment may never arrive, it is uncertain, and the instruments are not promissory notes.

*Kelley v. Hemmingway* (13 Ill. 604) is another example:

Treat, Chief Justice. This is an action brought by Hemmingway against Kelley before a justice of the peace, and taken by appeal to the Circuit Court. On the trial in the latter court the plaintiff offered in evidence an instrument in these words:

Castelton, April 27, 1844.

Due Henry D. Kelley fifty-three dollars when he is twenty-one years old, with interest.

DAVID KELLEY.

(On the back of which was this indorsement.)

Rockton, May 1, 1849.

Signed the within, payable to Moses Hemmingway.

HENRY KELLEY.

The plaintiff proved that the payee became of age in August, 1849. The defendant objected to the introduction of the instrument because it was not negotiable, but the court admitted it in evidence and rendered judgment for the plaintiff.

Some statutes make promissory notes assignable by indorsement in writing, so as absolutely to vest the legal interest in the assignee. Was the instrument in question a promissory note? To constitute a promissory note, the money must be certainly payable, not dependent on any contingency, either as to event, or the fund out of which payment is to be made, or the parties by or to whom payment is to be made. If the terms of an instrument leave it uncertain whether the money will ever become payable, it cannot be considered as a promissory note. (Chitty on

Bills, 134.) Thus a promise in writing to pay a sum of money when a particular person shall be married is not a promissory note, because it is not certain that he will ever be married. So of a promise to pay when a particular ship shall return from sea, for it is not certain that she will ever return. In all such cases, the promise is to pay on a contingency that may never happen. But if the event on which the money is to become payable must inevitably take place, it is a matter of no importance how long the payment may be suspended. A promise to pay a sum of money on the death of a particular individual is a good promissory note, for the event on which the payment is made to depend will certainly transpire.

In this case, the payment was to be made when the payee should attain his majority—an event that might or might not take place. The contingency might never happen, and, therefore, the money was not certainly and at all events payable. The instrument lacked one of the essential ingredients of a promissory note, and consequently was not negotiable under the statute. The fact that the payee lived till he was twenty-one years of age makes no difference. It was not a promissory note when made, and it could not become such by matter *ex post facto*. The plaintiff has not the legal title to the instrument. If it presents a cause of action against the maker, the suit must be brought in the name of the payee. The case of *Goss v. Nelson* (1 Burr. 226) is clearly distinguishable from the present. There, the note was made payable to an infant when he should arrive at age, and the day when that was to be was specified. The Court held the instrument to be a good promissory note, but expressly on the ground that the money was at all events payable on the day named, whether the payee should live till that time, or die in the interim; and it was distinctly intimated that the case would be very different

had the day not been stated in the note. It was regarded as an absolute promise to pay on the day specified, and no effect was given to the words that the payee would then become of age.

**But if time specified is certain to arrive the bill or note is sufficiently certain. Instruments payable at or after death.**—Section 27. But how should we decide as to the following instruments?

Thirty days after death I promise to pay to Wm. R. Carpenter or order \$100.

DAN'L F. CRIDLER.

Ten days after the death of my father I promise to pay Wm. R. Carpenter or order \$100.

DAN'L F. CRIDLER.

The courts have held them (as the judge in *Kelley v. Hemmingway* said) to be valid notes because in each the time of payment is certain to arrive some time in the future. Nothing is more certain than death, though the time of death is uncertain.

**Instruments payable in a reasonable time.**—Section 28. On the same reasoning, instruments payable "in a reasonable time," or "when convenient" or "when we mutually agree," have been held promissory notes because they are payable in a reasonable time and a reasonable time is sure to elapse. *Page v. Cook* (164 Mass. 116) is such a case. The instrument was in this form:

\$500. Boston, May 1, 1891. On demand, after date, I promise to pay to the order of Hollis Bowman Page five hundred dollars, payable when payor and payee mutually agree. Value received.

GRACE V. COOK.

The Court said: "According to the literal construction of this note, although the defendant promises to pay the plaintiff the sum named when he demands it, she may escape the performance of this promise by refusing to agree with the plaintiff when it shall be paid. We think that it hardly could have been the intention of the parties to put it into the power of the defendant thus to avoid payment, and that it is more reasonable to construe it as meaning that it is payable when and after the payor ought reasonably to have agreed. . . . The promise to pay is absolute. It is only the time of payment which is left to future agreement. Evidently it is expected from the tenor of the note that the parties will agree, and that a time will be fixed, and that the note will be paid. But no time is fixed within which that agreement is to be made. The law will, therefore, imply a reasonable time. Besides it is the payment, not the nonpayment, of the note for which the parties are providing. If the payor does not within a reasonable time agree when the note shall be paid, there is nothing unjust nor at variance with the real meaning of the contract in holding that the payee may thereupon demand payment, and, if the note is not paid, proceed to collect it."

**Instruments payable "on or before."**—Section 29. The common form of note payable "on or before Jan. 1, 1911," is a familiar example of the rule that if the time of payment is bound to arrive, uncertainty as to when the instrument will be paid will not deprive it of its negotiable character.

**Instruments payable in installments.**—Section 30. Notes payable in installments are also held to be negotiable instruments on this principle, even when, as is frequently provided, the whole sum became due upon default in the payment of an installment, or of interest, or in the performance of a provision of a mortgage given to secure the note. The

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following are examples of negotiable instruments held to be such notwithstanding the provision hastening payment in case of default:

Dec. 11, 1900.

\$6500

Three years after date I promise to pay to the order of H. Hermann \$6500.00 with interest at five per cent payable semi-annually.

The payment of this note is secured by a mortgage of even date herewith on real estate. If default shall be made in the payment of interest, or in case of failure to comply with any of the conditions or agreements of the mortgage collateral hereto, then the whole amount of the principal shall at the option of the mortgagee, or his representatives or assigns (notice of such option being hereby expressly waived), become due and payable without any notice whatever.

HENRY MINDEMAN.

25th April, 1872.

£170

We promise to pay to Messrs. M. H. Cooke and Co. £170 with interest thereon at the rate of 5 per cent per annum, as follows: the first payment to wit £40 or more, to be made on the 1st of Feb., 1873, and £5 on the first day of each month following until this note and interest shall be fully satisfied, and in case default shall be made in payment of any of the said installments, the full amount then remaining due in respect of the said note and interest shall be forthwith payable.

JOHN HORN.

Providence, Nov. 1, 1873.

\$1000

Three years from January 1st, 1874, for value received, the A. & W. Sprague Manufacturing Company promise to pay to the order of A. & W. Sprague One Thousand Dollars, with

interest from January 1, 1874, payable semiannually at the rate of seven and three-tenths per cent per annum, till said principal sum is paid, whether at or after maturity; and all installments of interest in arrear shall bear interest at the rate aforesaid till paid, but reserving the right to pay this note before maturity in installments of not less than five (5) per cent, of the principal thereof, at any time the semiannual interest becomes payable, principal and interest payable at the place of business in said Providence.

AMOS SPRAGUE,  
Treasurer.

Countersigned, Z. CHAFEE, Trustee,  
(Indorsed) A. & W. SPRAGUE.

The Court, in its opinion holding the last of the above instruments a valid note, said:

"Are they certain as to time of payment? And upon this point let us first ascertain what degree of certainty is meant by this expression. We think the rule of law is clearly this, namely: 'that if the time of payment named in the note must certainly come, although the precise day may not be specified therein, it is sufficiently certain as to time.' In other words, it must not depend upon any contingency: a 'when A shall marry' (*Pearson v. Garrett*, 4 Mod. 242) or when a certain ship shall arrive (*Coolidge v. Ruggles*, 15 Mass. 387; *Grant v. Wood*, 12 Gray 220; *Palmer v. Pratt*, 2 Bing. 185); or when a certain suit is determined (*Shelton v. Bruce*, 9 Yerg. 24. *See also* *Woodbury, Williams and English v. Roberts*, 59 Iowa 348). And here the maxim, *Id certum est quod certum reddi potest*, is applicable although perhaps it is not as to the amount.

"So in *Cota v. Buck* (7 Met. 588), it was held, Shaw, C. J. delivering the opinion of the court, that a note in the following form, namely: 'For value received I promise to pay J. P. or bearer, \$570.50, it being for property I purchased of him in value at this date, as being payable a

soon as can be realized of the above amount for the said property I have this day purchased of said P., which is to be paid in the course of the season now coming,' was a negotiable promissory note, on the ground that it was payable at all events within a limited time, namely, 'the coming season,' and that whether that meant 'harvest time or the end of the year,' it must come by the mere lapse of time, and that must be the ultimate limit of the time payment."

"So, also, in *Curtis v. Horn* (58 N. H. 504), a note payable 'on or before the first day of May next,' was held to be negotiable. In delivering the opinion of the court in that case, Justice Bingham said: 'It is now' the common law, that where the payment is made to depend upon an event that is certain to come, and uncertain only in regard to the time when it will take place, the note or bill is negotiable.' In *Mattison v. Marks* (31 Mich. 421), it was held that a promise to pay 'on or before' a day named stated the time for payment with sufficient certainty. In that case Cooley, J., said: 'The legal rights of the holder are clear and certain; the note is due at a time fixed, and is not due before. True, the maker may pay sooner if he shall choose, but this option, if exercised, would be a payment in advance of the legal liability to pay, and nothing more. Notes like this are common in commercial transactions, and we are not aware that their negotiable quality is ever questioned in business dealings.

"Indeed, the cases have gone so far in this direction as to hold that a note payable within a limited time after the death of a person named is sufficiently certain as to time. (*Cooke v. Colehan*, 2 Strange, 1217; *Colehan v. Cooke*, Willes, 393.) So, also, it has been repeatedly held that notes payable in installments at fixed dates are negotiable."



Section 1, subdivisions 3 and 4 are the sections of statute incorporating the rules we have been considering. (Read and study.)

**Demand instruments.**—Section 31. Although not certain as to the time of payment, which lies to a great extent within the control of the holder, instruments payable on demand or at sight have always been held good bills and notes. An instrument like a check which does not specify any time of payment is construed to be payable on demand and consequently is a valid negotiable instrument.

Section 1, subdivisions 3 and 7 of the statute recognize and define demand instruments. (Read and study.)

**Parties.**—Section 32. There are two parties to a promissory note: a promisor, called the maker, and a promisee called the payee. A bill of exchange requires three parties: a drawer, or the one who makes out the bill; the payee, the person to whom the bill is payable; and the drawee, the one upon whom the order is drawn. (See Forms 1 and 2 in Chapter I.)

The validity of a bill or note is not affected by the fact that one person is designated in more than one capacity. For example, in Form 1 Cridler might be named both maker and payee. But since he as payee could not sue himself as maker, the instrument does not become an enforceable obligation until it is transferred to another person, the indorsee. So a bill of exchange is often made payable to the drawer, or the same person is designated both as drawer and payee. In either case the bill is sufficient in form, and upon transfer to a third person becomes operative.

Negotiable Instruments Law, § 8, provides that a negotiable instrument "may be drawn payable to the order of

(1) A person who is not maker, drawer or drawee; or (2) the drawer or maker; or (3) the drawee."

**Certainty of parties—drawer and maker—signature.**  
—Section 33. If there is no signature by the maker or drawer, the instrument is not a bill or note (§ 1, 1). The maker or drawer is indicated by his signature. The signature need not be at the end of the instrument; it is good if it is in the body of the instrument and intended as his signature. For example, the following is a good promissory note:

I, John Smith, promise to pay A. or order, \$100 on demand.

Any written symbol or mark is sufficient provided the maker intended to bind himself by the symbol or mark used. He may even use figures or an assumed trade name.

"But no person is liable on the instrument whose signature does not appear thereon." (Neg. Instr. Law, § 18.) Thus Rowelstone, although Walker was admittedly acting as agent for him to the knowledge of Siffkin, was not liable on the following note:

Two months after date, I promise to pay J. Siffkin or order 300 pounds for value received.

(Sgd.) THOS. WALKER.

And, conversely, if Walker were sued on the instrument his agency would be no defense because he has made it his note by signing it as maker.

Suppose Walker had added the word "agent" after his signature, would this discharge Walker from liability? Under no circumstance could Rowelstone be held on a

note that he did not sign or upon which his name did not appear. Walker would not be bound if the holder of the note knew that Walker was acting as agent and did not intend to bind himself. But, on the other hand, if the holder did not know that Walker did not intend to bind himself, Walker would be liable on the note. Simply putting the word "agent" after the signer's name does not give notice to the holder that the signer does not intend to be bound. The courts treat it as a word of identification, a sort of description of the signer, just as they do the phrase "of Chicago, Ill." or the initials M. D. after a doctor's signature. At most, it shows the signer's business. The same reasoning is applied to instruments signed "Walker, agent of Rowelstone." Rowelstone is not bound because his signature is not on the note, but Walker is bound because the note bears his signature, unless the holder knows that Walker did not intend to be bound. The words "Agent of Rowelstone" after his signature are treated as merely descriptive words. Corporate notes are subjected to the same rules.

The question then will naturally rise in the student's mind, how should the signature be written to bind the principal or corporation? The usual way is to sign the name of the principal and then under it the following: "per C. D." or "per C. D. agent." In signing a note for a corporation the name of the corporation should be used. Treat the corporation the same as if it was an individual. The following is an example of a proper signature for a corporation:

The Consumer Co.,

by Fred N. Upham, President.

**Certainty of parties—payee.**—Section 34. “Where the instrument is payable to order, the payee must be named or otherwise indicated with reasonable certainty.”

(Neg. Inst. Law, § 8.) If the reader will call to mind a note he will recall that it is usually payable to order of some designated person, or to bearer. “Ninety days after date I promise to pay to the order of John Smith” is the usual form for a note, and “Pay to the order of John Smith” for a bill of exchange. The payee must be designated with reasonable certainty. A person may be described by his trade name or by any name whatsoever provided the payee can show that he was the person intended to be described by the name used. For example, Elizabeth Willis was allowed to recover a note payable to Elizabeth Willison, upon proof that she was the person described by the name on its face. An instrument in the form of a note payable to “F. B. Bridgeman’s estate” is held to be a note of which Bridgeman’s executor is payee. We frequently see notes and bills made payable to “X Cashier.” In such cases by mercantile usage the bill or note is not payable to X, the individual, but to the bank of which he is cashier. “X Cashier” is the trade name of the bank. (Neg. Inst. Law, § 42.)

**Fictitious payees.**—Suppose, however, the name used in a note is not intended by the maker to designate any person bearing that name, or any other person, but that the maker intends to indorse and issue the note himself. In such a case the note when indorsed by the maker is treated as payable to bearer. The rule is thus stated in § 9, subdivision 3, of the Negotiable Instruments Law. “The instrument is payable to bearer . . . when it is payable to the order of a person known by the drawer or maker to be fictitious or nonexistent or of a living person not intended

to have any interest in it." The reason for the rule is that if the instrument were treated as payable to order, its indorsement and transfer by the maker, who is not named as payee, would not pass title to the instrument, and the transferee would get no rights on the instrument. Thus the maker, by transferring the note, would be perpetrating a fraud upon the transferee. To avoid this result the instrument is treated as payable to bearer. But if the maker supposed that the name in the note designated a particular individual and intended it to be payable to the person whom he supposed he had designated, but in fact the name did not designate any particular individual, the note is not payable to bearer, and the maker is not liable on the note, if it is negotiated. For example, in *Minet v. Gibson Livesey & Co.* drew a bill of exchange on defendant payable to "J. White." The defendant accepted the bill. "J. White" was not intended to designate any person and this was known to the defendants. Livesey & Co. then indorsed the bill to the plaintiffs. It was held that the defendants were liable on the bill. It was no defense that the bill had not been indorsed "J. White," because the acceptor knew that "J. White" was, as the statute says, "a fictitious or nonexistent person." As we have said, the decision would have been different had Livesey & Co., the drawees, not known that "J. White" was a fictitious name. In a note or bill payable to "A, executor of B's estate, and his successors" or to "A, treasurer of the B corporation for the time being," although the person entitled to payment of the instrument is not certain, the "office" is designated with certainty and the paper is really payable to the office. But this reason cannot be applied to an instrument payable to "A, treasurer of X Society (unincorporated) or his successors," for here there is no regularly constituted legal office." Such a note must be treated either as payable to A, the words "treasurer," etc., being disregarded, in which event

it would be a negotiable instrument payable to A; or as payable to whomever happens to be the treasurer at the time of payment, in which event it is uncertain as to payee and, is not a bill or note. The former construction seems the more reasonable.

**Certainty of parties—the drawee.**—Section 35. A bill is an order “addressed by one person to another.” “A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.” “Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.” (Neg. Inst. Law, §§ 125, 127, and subdivision 5.) Thus the following is defective as a bill for want of a drawee:

Montevallo, June 1, 1858.

\$2771.62

Ten months after date pay to the order of John S. Storrs two thousand seven hundred and seventy-one and 62/100 dollars, to ....., Mobile, Ala.

D. E. WATROUS.

The drawee, like the payee, must be named with reasonable certainty; the trade name may be used as in the case of the payee. It has even been held that writing an address on the instrument which appears to be a designation of the place of payment, rather than a description of the person to pay, may be interpreted as a mode of designating the person there residing or doing business as the drawee. Thus John Horson & Co. was held drawee of an instrument expressly naming no drawee, but addressed “At Messrs. John Horson & Co.”

**An instrument to be negotiable must be payable to order or to bearer.**—Section 36. When an instrument con-

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forms to all of the foregoing requirements, it is not negotiable unless it is payable to order or to bearer. Thus the following instrument is not negotiable:

Madison, Wis., March 4, 1910.

\$1000

Ninety days after date I promise to pay John Jones On  
Thousand Dollars. Value received.

A. B. MARCUS.

"The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order" (Neg. Inst. Law, § 8). The usual form of the negotiable instrument is "Pay A or order" or "Pay to the order of A." Payable to "A or assigns" is not negotiable.

"The instrument is payable to bearer: (1) When it is expressed to be so payable; or (2) When it is payable to a person named therein or bearer; or . . . (4) When the name of the payee does not purport to be the name of any person." (Neg. Inst. Law, § 9.) The word "bearer" is not the only word that may be used. Other words of like import will serve the purpose as well. Thus a note payable to "holder" is payable to bearer. The usual form of a bearer instrument is "Pay to bearer," or "Pay to A or bearer." But "Pay to the bearer A" does not make the instrument negotiable. Here the word "bearer" is used to identify A. An instrument drawn payable to "Cash" is payable to bearer. "Cash" is an impersonal payee which cannot indorse. If the instrument is to be negotiable, it must be treated as payable to bearer.

**Date, value received, place of payment.**—Section 37. There are a few things more to be considered before leaving the formal requirements of bills and notes. Many people have an idea that a date is absolutely essential upon

a bill or note, but the date only serves the purpose of fixing the time of payment. The maker of an instrument may regulate the day of payment by dating the instrument "back" or "ahead." Thus if on Jan. 1, 1910, the maker issued his note dated "Dec. 1, 1909," and payable "Three months after date," it would be payable March 1, and not April 1, 1910. If the same were dated Feb. 1, 1910, it would be payable May 1, 1910. The instrument in such a case would be a valid instrument. In the case of an instrument issued "payable three months after date" and not dated, it is payable three months from the date of issue; again, if by mistake the instrument was dated Jan. 1, 1909, instead of Jan. 1, 1910, it is payable from the date of issue. You will find a very good summary of the rules as to dates in §§ 6 (1), 17 (3), 11, and 12 of the Negotiable Instruments Law.

A bill or note need "not specify the value given, or that any value has been given therefor."

A bill or note need "not specify the place where it is drawn or the place where it is payable."

"The validity and negotiable character of an instrument are not affected by the fact that it bears a seal."

**Summary definition of a bill and of a note.**—Section 38. "A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer." (Neg. Inst. Law, § 125.)



"A negotiable promissory note . . . is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money, order or to bearer . . ." (Neg. Inst. Law, § 183.)

**Interpretation.**—Section 39. The Statute gives the rule for the interpretation of negotiable instruments in § 17.

## CHAPTER IV

### INCEPTION OF THE INSTRUMENT AS AN OBLIGATION

**Intentional signing.**—Section 40. An instrument in every formal respect a completed promissory note or bill of exchange is of no legal effect unless the maker or drawer signed the paper intending to sign a bill or note. Thus, in *Walker v. Ebert* (29 Wis. 194—1871), the defendant, a German unable to read and write English, was induced by the payees to sign an instrument, in form a promissory note, in reliance upon their false statements that it was a contract appointing the defendant agent to sell a patent right. The payees sold the instrument to the plaintiff who knew nothing of the fraud. It was held that the defendant was not liable. The instrument, although complete in form, was not the defendant's note and the plaintiff acquired nothing by his purchase of the paper.

**Signing without reading: carelessness.**—Section 41. In such a case, however, the defendant may have been so careless in affixing his signature to a paper, of the contents of which he is ignorant, that it would be unjust to allow him to escape liability to the innocent purchaser. When this is true the courts refuse to allow the apparent maker the defense that he did not intentionally sign the note in question. Thus, in *Chapman v. Rose* (56 N. Y. 137—1874), the defendant signed a document in form a promissory note for \$270 payable to Miller or bearer. The de-

fendant, misled by the false statements of Miller, suppose he was signing the duplicate of an order for farm machinery, the original of which he had delivered to Miller a few moments before. The paper having passed into the hands of an innocent purchaser, it was held that the defendant was liable upon the note. The Court deemed the conduct of the defendant so careless in signing without reading when he might have done so, that it was unjust to allow him to set up the defense that he did not intentionally sign a note.

**Carelessness a matter of fact.**—Section 42. The question, however, whether the defendant has been careless is one of fact about which courts and juries may differ, although there may be no dispute as to the rule of law. In *Lewis v Clay* (67 Law Jour., Queen's Bench 224—1898) Clay affixed his signature to instruments in the form of notes for upward of \$55,000 under the following circumstances. Lord Neville, whom the defendant had known intimately for some years, requested the defendant, soon after he became of age, to sign certain documents as witness of Neville's signature thereto. The face of the documents was covered with blotting paper, with holes clipped out leaving places for the defendant's signatures. Neville told the defendant that the documents related to family affairs of a private nature, the contents of which he would prefer the defendant not to see. The defendant, believing the statements of Neville, signed his name through the openings in the blotting paper. It was held that the defendant was not liable to an innocent purchase of the documents. They were not the defendant's notes, nor did the Court consider that the defendant's conduct was such as to make it unjust for him to set up that he never intended to sign the notes.

**Intentional signing induced by fraud.**—Section 43. The class of cases we have been discussing should be carefully distinguished from cases where the maker intended to make and sign the note upon which he is sued, but would not have intended to sign had he known the true facts. In *Miller v. Finley* (26 Mich. 249—1872), the defendant was induced to sign a note for the price of a worthless patent right, which was fraudulently represented by the payee to be a valuable invention. The payee sold the note to the plaintiff, who knew nothing of the fraud practiced upon the defendant. It was held that the defendant was liable. His intention to make and sign the note in dispute was unquestioned. He would not have so intended had he known that the patent was valueless, but he did not know that fact and in consequence intended to sign. Of course, in such a case the payee who practiced the fraud would not recover upon the instrument for the reason that it would be unjust to allow him to enforce the obligation and retain the proceeds, and not because the note was not a valid negotiable instrument.

**“Delivery”**—Section 44. In addition to the intentional signing of the instrument, something further is necessary to give it an inception as an obligation. In order that the bill or note may have legal effect, it must have passed out of the possession of the maker or drawer.

A note found among the maker's papers after his death imposes no obligation upon him or his estate. But if in any manner a completed instrument passes out of the possession of the signer into that of the payee or bearer, the instrument imposes a legal obligation on the maker or drawer. The mere involuntary parting with possession, i. e., delivery without intention to deliver, gives the instrument its inception as a bill or note. The inception of

the instrument may thus result from a theft or forcible taking by the payee or bearer from the signer, or, from fraud or duress practiced by the former upon the latter as well as from an intentional delivery by the maker or drawer.

**Position of fraudulent payee or bearer.**—Section 4. The payee or bearer who has secured possession of the instrument by theft, fraud, duress, or under such circumstances that, to his knowledge, the maker does not intend the instrument to operate for the payee's benefit, is not permitted personally to enforce it. This is not because the stolen instrument is not the obligation of the signer, but because the payee, in consequence of the manner in which he secured the instrument, is compelled on obvious grounds of justice to hold it, or its proceeds when collected, for the defrauded signer. It would be profitless to permit him to sue the maker on the note, when the maker himself could turn about and recover from the thief either the instrument or any money which the thief has received upon it.

**Position of payee in case of conditional delivery.**—Section 46. Similarly, if the maker or drawer delivers the instrument to the payee upon condition that it shall not be enforced except upon the happening of a certain contingency, it is not enforceable by the payee until the condition is fulfilled. Thus, in *McFarland v. Sikes* (54 Conn. 250—1886), the defendant had delivered a promissory note for \$300 payable to the plaintiff upon condition that the instrument was to be returned when demanded. The defendant demanded the instrument, but the plaintiff refused to return it and brought action on the note. It was held that the plaintiff could not recover. The real reason for the decision is that, were the plaintiff allowed to recover on the

note, the defendant could turn about and recover from the plaintiff for breach of his contract to return the note on demand. The parties would then, after two actions, be in the same position as if no recovery had been allowed in the first instance.

That the reasons why a payee or bearer who has obtained possession of a bill or note upon the maker or drawer by theft, fraud, or duress, or upon condition that he will not enforce it, are those suggested, and not that the instrument has not had the inception, is made clear by the cases discussed below. In those cases, had the paper not been the existing obligation of the maker or drawer in the thief's hands, the thief's transfer to the plaintiff would have vested no right against the maker or drawer in the plaintiff; and the case would be like the sale of a stolen watch which vests no right in purchaser.

**Position of innocent purchaser of the instrument.—**Section 47. If the thief, or fraudulent payee, or the payee who holds the note subject to a condition, sells the instrument to one who knows nothing of the wrong of the payee, the purchaser is entitled to recover upon the instrument from the maker. Thus, in *Shipley v. Carroll* (45 Ill. 285), it appeared that the defendant made and signed the note in suit as a matter of amusement with no design of delivering it to the payee, and that the payee stole the note from the maker and sold it to the plaintiff who had no notice of the theft. It was held that the note was an obligation of the maker's, and that the plaintiff who bought the note innocently was guilty of no wrong, breach of duty, nor injustice in enforcing it. In *Clark v. Johnson* (54 Ill. 296—1870), the same rule was applied. In that case the maker, who had signed a note complete in form, was about to insert a condition in it before delivery, when the payee

snatched the note from the maker's hands, made off with it and sold it to the plaintiff, an innocent purchaser. The maker was held liable. The same results have been reached under the Negotiable Instruments Law (*Greeser v. Sugam*, 76 N. Y. Supp. 922—1902; *Massachusetts Bank v. Snow*, 157 Mass. 159—1905), which provides as follows:

"Section 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of the holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed. . . ."

**Incomplete instruments.**—Section 48. If a person signs a promissory note or bill of exchange incomplete in some particular, as, for example, the amount or date of payment; or signs a blank printed form for a note or bill; or puts his signature on a piece of paper wholly blank and delivers it to another with authority to fill in the blank or blanks, so as to make a complete instrument, the signer is bound on the bill or note if the blanks are filled in in accordance with the authority by any holder, exactly as he would have been had he himself filled up the blanks before delivery. Furthermore, the signer of the incomplete instrument is assumed to have authorized any holder to fill in the blanks in any manner he desires, and in an action

against the signer upon the instrument he must prove that the authority he gave has actually been exceeded if that is the fact. In the words of the Statute (§ 14): "Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced . . . it must be filled up strictly in accordance with the authority given and within a reasonable time." For example, in *Cruchley v. Clarence* (2 Maule & S. 90—1813), the defendant drew a bill on M. payable "to the order of ——" and delivered it to Vashon, who transferred it to the plaintiff. The plaintiff inserted his own name in the instrument as payee and sued the defendant. It was held that the plaintiff must be assumed to have authority to fill in the blank as he saw fit, the defendant not having shown that he had limited Vashon's authority in respect to the filling of the blank; and the plaintiff prevailed. An illustration of the other aspect of this rule is *Awde v. Dixon* (6 Exch. 869—1851). In that case the defendant signed a note blank as to date and payee, and delivered it to his brother, authorizing him to fill the blanks and negotiate it after one Robinson had signed the note as comaker with the defendant. Without securing Robinson's signature, the brother took the note to the plaintiff, who bought it in good faith and filled in the date and his own name as payee. It was held that the plaintiff could not recover, it appearing that the defendant had authorized the filling in of the blanks only in the event of Robinson's signing; the presumption of authority arising from possession of the note



with unfilled blanks was rebutted. (See also, to same effect, *Boston Steel Co. v. Steuer*, 183 Mass. 140—1903.)

**Innocent purchaser of instrument completed in excess of authority.**—Section 49. Suppose, however, that the plaintiff had purchased the notes from the brother after he had, in breach of his authority, filled the blanks, and that the plaintiff had no knowledge that the note was not complete when signed by defendant. In such a case the plaintiff would recover. (*Putnam v. Sullivan*, 4 Mass. 45—1808.) The violation of his authority by the defendant's agent would be no reason for defeating a purchaser in good faith of the completed note. The Statute (§ 14) states the rule as follows: "But if any such instrument, after completion, is negotiated to a holder in due course it is valid and effectual for all purposes in his hands and he may enforce it as it had been filled up strictly in accordance with the authority given and within a reasonable time."

**Incomplete instruments not intentionally delivered as such.**—Section 50. Up to this point we have been dealing with blank pieces of paper and incomplete notes and bills which have been signed and delivered by the signers "in order that the paper may be converted into a negotiable instrument." If the signer of a blank sheet of paper intended it for some other purpose, or if the signer of an incomplete note never intrusted any one with the paper for that purpose, the signer is not chargeable upon the paper, even though after its completion it was transferred to an innocent purchaser. In *Caulkins v. Whisler* (29 Ia. 495—1870), the defendant was employed by Smith as agent to sell farm machinery. At Smith's request defendant signed his name upon a blank piece of paper, which Smith was to send to the manufacturers of the machinery, so that they

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might know defendant's signature upon the orders he might send in. The note upon which the action was brought was printed over defendant's signature. The defendant was not liable. In another case the defendant wrote his signature as acceptor on several printed blank forms for bills of exchange and left them in a drawer of his desk. The blanks were stolen, filled up and negotiated to the plaintiff, an innocent purchaser. It was held that the plaintiff could not recover. (*Buxendale v. Bennett*, 3 Queen's Bench Div. 525—1878.) The Statute (§ 15) thus codifies the result of these cases: Where an incomplete instrument has not been delivered, it "will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder."

**Presumption of delivery.**—Section 51. That a negotiable instrument has not had a valid inception is a fact which must be proved in the first instance by the defendant who is sued upon it. In other words, from the mere production in court by the plaintiff of a completed instrument signed by the defendant, it is inferred, as a matter of fact, that the instrument produced is the obligation of the signer. "Where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved." (Neg. Inst. Law, § 16.)

**What a consideration is.**—Section 52. A simple promise is unenforceable in law. If A, intending to benefit B, promises to pay him \$100, B cannot compel A to pay. But if a consideration moved from B to A for the promise, there would be a valid contract and A's promise would be binding. A consideration is a surrender of a legal right or a promise to surrender a legal right. Thus, if B had paid A \$100, or delivered property to him, or turned hand

springs for A's amusement, or had promised to do any of those acts in exchange for A's promise to pay \$100, E could hold A to the performance of his promise.

**Consideration necessary for negotiable instrument.—**

Section 53. The doctrine of consideration was of pure Common Law origin, and it is probable that originally it had no place in the law of bills and notes, which has its roots in the Law Merchant. Thus, if A made a promissory note payable to B, and delivered it to the payee as a gift, it was once held that B could enforce the note. (2 Blackstone's Commentaries 445, 446; *Bowers v. Hurd*, 10 Mass. 427—1813.) But the Common Law courts, failing to distinguish between Common Law contract obligations and bills and notes, have attempted to apply the doctrine of consideration to negotiable instruments. Forced constructions of simple business transactions and arbitrary distinctions have been the result. Nevertheless the Statute enacts (§ 28) that "absence . . . of consideration is a matter of defense." Today, therefore, in the case supposed of the gift by A of his note to B, the absence of consideration would be a defense to A. (*Starr v. Starr*, 9 Oh. St. 75—1858.) Again, if B, the payee of the note for which he had given a consideration to the maker, indorsed the note to C as a gift, C could not enforce B's contract as indorser against him because no consideration was given by C. (*Easton v. Pratchett*, 1 Crompton, M. & R. 798—1834.)

**A preëxisting debt as a consideration.—**Section 54. The Statute declares (§ 25) that "any consideration sufficient to support a simple contract may be a consideration for a negotiable instrument." We are thus thrown back to our Common Law definition of consideration as a surrender of a legal right, or a promise to surrender a legal right.

## INCEPTION OF INSTRUMENT OBLIGATION 67

If A owes B \$100 and B accepts in satisfaction and discharge of the debt A's notes for that amount, the surrender by B of the old debt in exchange for the note is the surrender of a legal right and a consideration for the note. (*Union Bank v. Jefferson*, 101 Wis. 452—1899.) For the same reason, if B had accepted X's note in payment of A's debt to B, the surrender by B of A's debt would be a consideration for X's note. (*Petrie v. Miller*, 67 N. Y. Supp. 1042; 173 N. Y. 596—1901.) In both of these cases B's original claim against A has been absolutely discharged, and his only rights are upon the instrument. Thus, in the second case B could look to X only for payment. It is held, however, that unless the parties expressly agree that the note shall extinguish the debt for which it was given, it does not have that effect, and that if the note is not paid, B, the creditor, may sue A on the original debt. (*Ward v. Evans*, 2 Ld. Raymond 928—1702.) If, then, B accepts X's note on account of, but not in discharge of, a debt due from A, is there any consideration for the instrument? What legal right has B surrendered or promised to surrender? In such a case it is held that from B's acceptance of the note on account of the debt is "implied" a promise on his part to suspend his right to sue A until after the note becomes payable. Thus, if the note were payable three months after date, B's "implied" promise not to sue A on the debt for three months is said to be the consideration of the note. (*Thompson v. Gray*, 63 Me. 228—1874.) The same result is attained by the same reasoning where B accepts A's, the debtor's, own note payable after date on account of A's debt. (*Baker v. Walker*, 14 M. & W. 465—1845.) It is true in these cases that B, after accepting the note for the debt, cannot sue A until the note has become due. But the reason for this is not that B has impliedly promised not to sue, but the rule of law that the acceptance of a negotiable instrument

for a debt is conditional payment and *ipso facto* suspends the debt. (Ward *v.* Evans, 2 Ld. Raymond 928—1702; Martens-Turner Co. *v.* Mackintosh, 17 N. Y. App. Div. 419—1897.)

Suppose, however, the bill or note taken on account of the debt is payable on demand. In such a case the note would be due at once, and if not paid forthwith B might immediately bring an action against A on the original debt. Is there any implied promise on the part of the creditor who takes such an instrument not to sue his debtor? It seems there is not, and yet the courts hold that the instrument is binding whether it be the note of the debtor himself or a third person. (Childs *v.* Monins, 2 Broderip & B. 450—1821; Sison *v.* Kidman, 3 Manning & Gr. 810—1842; 57 N. Y. 641—1874. *But see* Strong *v.* Sheffield, 144 N. Y. 392—1895, for an exception to this rule in New York and some other states.)

The result of all these decisions is summed up in the Negotiable Instruments Law as adopted in most states as follows: "An antecedent or preëxisting debt constitutes consideration, and is deemed such whether the instrument is payable on demand or at a future time."

The real explanation of the cases holding a note taken on account of a debt to be binding, is that no consideration is necessary for a bill or note. But the courts and the Statute first force the Common Law requirement of consideration upon negotiable instruments, and then give a fanciful interpretation to simple business transactions in order to absolve it.

Another and more striking instance of where an obligation on a negotiable instrument is held binding without a

consideration, although the courts and Statute profess to require one, is the case where A, being indebted to C, draws a bill of exchange on B, who is under no obligation whatever to A, ordering B to pay \$100 to C. A delivers the bill to the payee. Upon presentation to C of the order to B, he, as an act of friendship or business accommodation, "accepts," i. e., promises to pay, the instrument. Clearly in this case neither A nor C has surrendered or promised to surrender any legal right, yet it is well settled law that B is liable on his acceptance. (*Commercial Bank v. Norton*, 1 Hill 501—1841.)

**Consideration, example of.**—Section 55. Of course, wherever, as in the case of an instrument accepted in absolute extinguishment of an existing debt, there really is a consideration for the maker's, or indorser's, or acceptor's promise, viewed as a simple Common Law promise, the instrument is enforceable.

Thus, where the creditor receiving a negotiable instrument in fact promises to refrain from suing on the debt until the instrument matures, or at the request of the debtor actually refrains from suit, the instrument is binding. (*Mansfield v. Corbin*, 2 Cush. 151—Mass. 1848; *Russell v. Bassett*, 66 Atl. 531—Conn. 1907.) Or if A loans money to B and takes B's note or a third party's note as collateral security for a loan, the advance of money by A is a consideration for the note of either B or X. (*Black v. Bank*, 54 Atl. 88—Ind. 1903; *Metropolitan Co. v. Springer*, 90 N. Y. Supp. 376—1904; *Merrick v. Alderman*, 60 Atl. 109—Conn. 1905.) Or if A holds B's note as collateral security for B's debt, A's surrender of the note in exchange for X's note substituted as collateral security for the debt is a consideration for X's note. (*Allerton Bank v. Clay Co.*, 66 Atl. 252—Pa. 1907.) Or if A gives his note to B in

exchange for B's note to A, the giving of each note is a consideration for the other. (*Milius v. Kaufman*, 93 N. Y. Supp. 669—1905.)

**Moral consideration.**—Section 56. As the Statute says, any consideration sufficient to support a simple contract may be a consideration for a negotiable instrument, and we find the anomalous doctrine of "moral consideration" recognized in the law of Bills and Notes. So if A gives his note to B for a debt which is barred by the statute of limitations, or by A's discharge in bankruptcy, or voidable on the ground of A's infancy or insanity, A's note is enforced against him on the same theory as his simple promise to pay would be in such cases. (*Hill v. Van Trees*, 50 Cal. 547—1875; *Wislozemus v. O'Fallon*, 91 Mo. 184—1886; *Bank v. Sneed*, 97 Tenn. 120.)

**Presumption of consideration.**—Section 57. Although a consideration is necessary for a negotiable instrument, the plaintiff in an action on a bill or note does not need to prove that he gave one. Absence of consideration is a "matter of defense" which the defendant must prove in order to defeat the action. "Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value." (Neg. Inst. Law, § 24.)

## CHAPTER V

### ACCEPTANCE OF BILLS OF EXCHANGE

**Subject of assignment.**—Section 58. If you will turn to Form 2, in Chapter I, the form of the bill of exchange, you will notice written across the face of the bill the words "Accepted, Feb. 2, 1902. James McBride." This is an acceptance. This chapter will deal with the form and kinds of acceptance of bills of exchange.

**Function of acceptance.**—Section 59. It is perfectly clear that the mere drawing of a bill by the drawer and its delivery by him to the payee for value puts the drawee under no obligation to the payee to pay the amount of the bill. For example, if I draw on you for \$100, you will not be obliged to pay my bill. You owe me nothing. Even if you did owe me \$100, you would still not be bound to pay the bill to the payee. Your debt was to me and there is no way in which I can compel you to pay a third person except by assigning my claim to the third person. Is the drawing and delivery of the bill to the payee an assignment of my claim against you? A bill of exchange is an *order* on the drawee to pay. An assignment is in theory an agency or authority to collect. A bill is, then, not an assignment and in consequence the payee of a bill of exchange has no rights against the drawee. The Statute provides: "A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same." (Neg. Inst. Law, § 126.)



We may even take a stronger case and arrive at the same result. Suppose the drawee had contracted with the drawer to pay all bills the drawer might draw upon him. Can the payee of a bill drawn in pursuance of such a contract enforce it against the drawee? Certainly not. The bill itself, as we have just seen, gave the payee no rights against the drawee; and the contract between the drawer and drawee to pay is not available to the payee because he is not a party to it, and it has not been assigned to him. The only effect of the refusal of the drawee to pay is to make him liable to the drawer (not on the bill) in damage for breach of his contract. If you will consider this case for a moment you will see that it is the common case between bank and depositor. Upon the acceptance of an ordinary deposit the bank agrees to pay all checks drawn upon it by the depositor up to the amount of his deposit. But neither this contract nor the check itself gives the payee or other holder any rights against the bank. The Negotiable Instruments Law provides:

"A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this Act [which] are applicable to a bill of exchange payable on demand apply to a check.

"A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check." (Neg. Inst. Law, §§ 184, 188.)

What, then, is necessary to bind the drawee? It is "the signification by the drawee of his assent to the order of the drawer." (Neg. Inst. Law, § 131.) Expressed in proper form, such an expression of assent is an acceptance. An

acceptance binds the drawee to pay the bill according to its terms.

**Form of acceptance.**—Section 60. “The acceptance must be in writing and signed by the drawee.” (Neg. Inst. Law, § 131.)

**Proper acceptance.**—An acceptance usually consists of the word “accepted,” the date, and the drawee’s name written on the face of the instrument as in Form 2, Chapter I. But any words written on the face or back of the instrument signifying the drawee’s assent to the order are sufficient, provided they are coupled with the drawee’s signature. For example, “Accepted,” “Presented,” “Seen,” “Payable at X bank,” or an order by the drawee on his agent to pay, preceded or followed by the drawee’s signature, are good forms of acceptance. It is also held that the drawee’s signature on the instrument without more is a sufficient acceptance.

In *Spear v. Pratt* (2 Hill, N. Y. 582), the court said:

“Any words written by the drawee on a bill, not putting a direct negative upon its request, as ‘accepted,’ ‘presented,’ ‘seen,’ the day of the month, or a direction to a third person to pay it, is *prima facie* a complete acceptance, by the Law Merchant. (Bayley on Bills, 163, Am. ed. of 1836, and the cases cited there.) Writing his name across the bill, as in this case, is a still clearer indication of intent, and a very common mode of acceptance. This is treated by the Law Merchant as a written acceptance—a signing by the drawee. ‘It may be,’ says Chitty, ‘merely by writing the name at the bottom or across the bill’; and he mentions this as among the more usual modes of acceptance. (Chitty on Bills, 320, Am. ed. of 1839.)

"It is supposed that the rule has been altered by 1 R. S. 757 (2d ed.) § 6. This requires the acceptance to be in writing, and signed by the acceptor or his agent. The acceptance in question was, as we have seen, declared by the Law Merchant to be both a writing and a signing. The Statute contains no declaration that it should be considered less. An indorsement must be in writing and signed; yet the name alone is constantly holden to satisfy the requisition. No particular form of expression is necessary in any contract. The customary import of a word, by reason of its appearing in a particular place, and standing in a certain relation, is considered a written expression of intent quite as full and effectual as if pains had been taken to throw it into the most labored periphrase. It is said the revisers, in their note, refer to the French law as the basis of the legislation which they recommend; and the French law requires more than the drawee's name—the word *accepted*, at least. That may be so; but it is enough for us to see that both the terms and the spirit of the act may be satisfied short of that word, and more in accordance with the settled forms of commercial instruments in analogous cases. The whole purpose was probably to obviate the inconveniences of the old law which gave effect to a parol acceptance."

**Extrinsic written acceptance.**—The acceptance, to be binding, need not be written on the bill. For instance, an acceptance by telegraph is sufficient if the message is filed or delivered in writing. But "where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person who, on the faith thereof, receives the bill for value." (Neg. Inst. Law, § 133.) Thus if a purchaser of a bill of exchange which had been accepted by telegraph did not take it on reliance

upon the message, he would have no action against the drawee.

**Virtual acceptance.**—Section 61. The drawee may make a contract with the drawer that he will accept bills to be drawn upon him in the future. Such a contract is valid whether oral or in writing. But it is a contract which gives the payee no rights, because he is not a party to it. The drawer would have a right of action for breach of the contract, but not the payee. The fact that the payee has no rights against the drawee, even where he took the bill knowing of the drawee's promise to accept, led to the recognition of the binding effect of so-called "virtual acceptances" of bills not yet drawn. The Statute states the law in this way: "An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person, who, upon the faith thereof, receives the bill for value." (Neg. Inst. Law, § 134.)

The promise to operate as a virtual acceptance must be *unconditional and in writing*; and no holder can charge the drawee upon his unconditional written promise unless he paid value for the instrument in reliance upon it.

**Constructive acceptance.**—Section 62. When a bill is presented to a drawee for acceptance, "the drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given dates as of the day of presentation." (Neg. Inst. Law, § 135.) The holder may give the drawee a longer time than this if he sees fit. During the period thus allowed the drawee to determine whether or not he will accept, the bill may be in the hands of the payee or in the hands of the drawee. If in the hands of the payee or holder at the end of the period he may treat it as dishonored and

proceed accordingly. (How he should proceed we shall see in a later chapter.)

If, however, the bill is left in the possession of the drawee when first presented for acceptance, the drawee, instead of returning it accepted or not accepted, may keep or destroy it. His retention may be with or without the holder's consent. If he keeps it with the consent of the holder, no legal consequences flow from the retention, even though the surrounding circumstances indicate an intention to accept. No matter how clear the intention to accept may be, it will not be an acceptance because an "acceptance must be in writing and signed by the drawee."

But suppose the drawee retains the instrument without the consent of the holder. Here the holder could bring an action to recover damages for wrongful detention of the instrument.

Some states insert the following in the uniform law, but it is not found in the original draft of the so-called Uniform Negotiable Instruments Law:

"Where a drawee to whom a bill is delivered for acceptance destroys the same, or refused within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same."

**Kinds of acceptance.**—Section 63. "An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bills as drawn." (Neg. Inst. Law, § 138.)

"An acceptance is qualified which is:

"1. Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

"2. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

"3. Local; that is to say, an acceptance to pay only at a particular place.

"4. Qualified as to time.

"5. The acceptance of some one or more of the drawees, but not all." (Neg. Inst. Law, § 140.)

**Conditional acceptance.**—A conditional acceptance is binding upon the acceptor subject to the condition. We have seen that a bill does not bind the drawee until accepted, and that the drawee is under no obligation to accept. It is easy to see, then, that the acceptor can attach a condition to his acceptance if he wishes to. For example, I draw a bill on you, a commission merchant, to whom I have shipped goods to be sold by you. You may accept by a promise to pay when the goods are sold. In this case you will be bound to pay the bill when the goods are sold, but not until then.

**Partial acceptance.**—For the same reason that a drawee may accept a bill conditionally, he may accept it for part of its face only. An old case affords an example of a partial acceptance. The drawee wrote on the bill, "I do accept this bill to be paid, half in money and half in bills." It was conceded that the promise to pay half in *bills* would not be an *acceptance* because it was not a promise to pay money. The drawee contended that he was not bound even as to the other half because a partial acceptance was not valid. But the court held him liable as to the half to be paid in money. The following is from the report

of the case: "A bill was drawn upon the defendant, who accepts it by indorsement in this manner: 'I do accept this bill to be paid, half in money and *half in bills.*' And the question was, whether there could be a qualification of an acceptance; for it was alleged that his writing upon the bill was sufficient to charge him with the whole sum. But 'twas proved by divers merchants, that the custom among them was quite otherwise, and that there might be a qualification of an acceptance; for he that may refuse the bill totally, may accept it in part." (Comberbach, 452.)

**Local acceptance.**—The drawee in his acceptance may specify a place of payment if he wishes, thus: "Accepted, payable at the First National Bank, Jas. McBride." Such an acceptance is *not* a qualified acceptance. It does not vary the original terms of the bill. Notwithstanding the express words of the acceptance, it is not necessary to present the bill for payment at the place specified, i. e., the First National Bank. So far as the acceptor is concerned his liability is in no respect different from the liability imposed if he had not named a place of payment in his acceptance. If, however, he had written on the bill "Accepted, payable at the First National Bank *only.* Jas. McBride," the acceptance would have been that kind of a qualified acceptance termed by the statute a local acceptance. Under such an acceptance the acceptor would not be bound to pay unless the bill were presented for payment at the First National Bank. By such an acceptance the drawee has imposed a condition, i. e., presentment at a particular place, upon his liability at variance from the terms of the bill as originally drawn.

**Acceptance qualified as to time.**—The drawee may qualify his acceptance as to the time of payment. Thus, if a bill is drawn payable June 1, 1910, the drawee may accept

it payable July 1, 1910. An example of such an acceptance is the following: "Accepted, payable July 1, 1910. Jas. McBride." Such an acceptance is binding upon the acceptor, obligating him to pay on July 1.

**Acceptance by some but not by all drawees.**—An acceptance of a bill drawn on three persons by one or two of them obviously does not bind the drawees who do not join in the acceptance. It does, however, bind those who do accept. A common example of such an acceptance is where a member of a firm accepts a bill drawn on the firm without authority to do so. Such an acceptance binds the partner who signed the acceptance, but the firm is not bound because the signature was not authorized.

If one not named as drawee purports to accept a bill, the acceptance has no effect as such. No one but a drawee named in the instrument can accept it.

**Payee or holder need not take a qualified acceptance.**—Section 64. We have seen that the acceptor may suit himself whether he accepts or not, or in what terms he will accept, but that he will be bound in accordance with the terms of his acceptance. The holder of the instrument also has certain rights. He may take the qualified acceptance if he sees fit, or he can insist upon a general acceptance written on the bill itself. If this is refused, and some other form offered in its stead, he may treat it as an absolute refusal to accept and treat the bill as dishonored.

"The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused may treat the bill as dishonored." (Neg. Inst. Law, § 132.)



"The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. . . ."

**Effect of taking qualified acceptance on the liability of drawer and indorsers.**—Section 65. "Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto." (Neg. Inst. Law, § 141.) For example, if X draws a bill on Y, payable to Z, who indorses and transfers the bill to M, and M takes a qualified acceptance from Y without the assent of X and Z, they are discharged and M must look to Y alone for payment. But "when the drawer or indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto." (Neg. Inst. Law, § 141.)

#### NEGOTIATION

**Transfer by operation of law.**—Section 66. The distinguishing characteristic of commercial paper, or negotiable bills and notes, is that they represent obligations to pay money, which are transferable. Unlike Common Law debts and obligations, they may be transferred from one owner to another. The transfer of the instrument may be (1) by operation of law, or (2) by the act of the parties.

A bill or note is transferred by operation of law in the following cases: (1) At the death of the holder when the instrument becomes the property of the deceased holder's executor or administrator; (2) Upon the bankruptcy of the holder, when it becomes the property of his trustee in bankruptcy.

**Transfer by act of parties; negotiation.**—Section 67. By the transfer of commercial paper by the “act of the parties” we mean the transfer of it from one owner to another as the same takes place in the ordinary course of business. Such a transfer is a “negotiation.” The appropriate mode of transferring a bill or note depends upon whether it is payable to order or to bearer. “If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, completed by delivery.” (Neg. Inst. Law, § 30.)

**Transfer by delivery.**—Section 68. We have already seen (Chapter III, Section 36) what instruments are payable to bearer. Delivery is all that is necessary to pass the ownership from one to another. Delivery is the transfer of the possession of the paper from one to another.

Delivery may be intended as a gift or as a sale to the transferee. It may be for a particular purpose, as for collection. The object of the transfer is immaterial; a transfer of the possession of the paper will pass the ownership of the instrument to the transferee. He is enabled to bring an action upon the instrument and collect the proceeds. If the transfer was a gift or sale he will keep the proceeds; if it was simply for collection he will hold the funds in trust for the benefit of the party who transferred it to him.

The fact that the purpose of the delivery does change the effect of the delivery of a bearer instrument is illustrated by two cases. In the first Mrs. Remsen was the holder of a note payable to bearer made by defendant. Mrs. Remsen was indebted to the defendant and had she attempted to sue him on the note he might have set off the amount she owed him against the amount due on the note.

But she delivered the note to her agent, the plaintiff, for the purpose of having the action brought by him. It was held that the plaintiff had become the owner of the note by the delivery and could maintain an action upon it; and the defendant was not allowed to set off his debt because it was not due from the plaintiff who was now the owner. Of course, when the plaintiff, Mrs. Remsen's agent, received the money from the defendant, he would have to hand it over to his principal, Mrs. Remsen. In the second case the Rev. Dr. Walker was the holder of a bill payable to bearer. Wishing to obtain the money due on the bill but unwilling that his name should appear as plaintiff in an action at law, he requested the plaintiff to bring an action on the bill for him. But the bill was not actually delivered to the plaintiff. It was held that the plaintiff was not the owner of the instrument and was not entitled to sue upon it.

**Transfer by indorsement. Form of indorsement.**—Section 69. The form employed to transfer a bill or note payable to order is indorsement. A valid indorsement must comply with each of the following requirements: (1) It must be written on the instrument; (2) it must be an order to pay the transferee; (3) it must order the payment to the transferee of the whole sum due on the instrument; and (4) the instrument with the indorsement upon it must be "delivered" to the transferee.

**Must be written on instrument.**—We have said that the first requisite of an indorsement was that it must be in writing on the instrument. Suppose I hand you a note payable to me or order and I orally order the maker to pay you. You would get no title to the note. The same thing would be true if I wrote the maker a letter in which I ordered him to pay you the amount of the note at maturity.

But if I write on a piece of paper, "Pay to the order of J. Orr," signing my name to the order, and attach the slip to the note, it will be good as an indorsement. This is an exception to the general rule and custom requiring the indorsement to be written on the instrument itself. Such a piece of paper attached to a bill or note for the purpose of bearing indorsement is called an allonge.

It does not affect the validity of the indorsement if it is written on the face of the instrument, notwithstanding the meaning of the word "indorse" and the almost universal usage of writing the order on the back.

The Statute provides: "The indorsement must be written on the instrument itself or upon a paper attached thereto." (Neg. Inst. Law, § 31.)

"Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is deemed an indorser." (§ 17 [6].)

**Must be an order to pay.**—Anything less than an order, i. e., an imperative direction, is not an indorsement. Thus, the delivery of a note payable to order with the following guaranty of payment written thereon was held not to transfer the note:

For value received, we hereby guarantee the payment of the within note at maturity, or at any time thereafter, with interest at ten per cent per annum until paid, and agree to pay all costs and expenses paid or incurred in collecting the same.

B. F. ALLEN, Pres't.

You will note that the writing contains no order to pay

anyone. For the same reason the following are not indorsements: "I assign the within note" or "I assign all my right, title, and interest in and to the within note." An assignment is an authority to the assignee to collect; an order is a direction to the maker to pay. This distinction, however, has been overlooked by many courts in recent decisions and both guaranties and assignments written on negotiable instruments have been held to transfer them as indorsements.

**Must be an order to pay whole sum due on instrument.**

—Section 70. An indorsement must be an order to pay the whole sum due on the instrument. Thus, if the payee of a note for \$100 "indorsed" it, "Pay \$50 to X," such a writing would give X no rights on the note. And even if the payee should subsequently write under his previous "indorsement" a second, "Pay the rest of the sum due on this note to X," X would still have acquired no rights on the instrument. Neither writing by itself is sufficient and two bad indorsements do not make one good one. It follows that the holder cannot indorse the instrument so as to make part payable to one and part to another. Such an indorsement would not pass title to either, even if the parts all taken together amounted to the whole sum. It is possible, however, if part of the bill or note has been paid, to indorse the instrument so that the balance due will be payable to the indorsee. Such an indorsement orders the payment of the whole sum due on the instrument at the time of the indorsement.

The statute provides: "The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate

as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue." (Neg. Inst. Law, § 32.)

An indorsement may be made to two persons jointly, as "Pay to M and N jointly;" such an indorsement would not be a partial indorsement as the whole sum is payable to the group M and N. An indorsement "Pay to M and N" seems to be good under the section of the Statute authorizing an instrument to be made payable to "one or more of several" persons. (Neg. Inst. Law, § 8 [5].)

**Must be delivered.**—Just as a promissory note does not take effect until delivered, so an indorsement is not effectual to transfer the instrument until there is a delivery. Thus, if I have a note payable to me and write upon it "Pay to M" and sign my name and put it back in the drawer of my desk, the transfer is not complete. But as in the case of the inception of a note, if the note duly indorsed is stolen from my desk, the indorsement is complete and effective to transfer the instrument, although of course the thief himself could not recover on the instrument.

**Kinds of indorsement: blank and special.**—Section 71. "An indorsement may be either in blank or special; and it may also be either restrictive or qualified, or conditional." (Neg. Inst. Law, § 33.)

"A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument." (§ 34.) "Pay to X (Sgd.) A," "Pay to X or order (Sgd.) A," and "Pay to the order of X (Sgd.) A," are examples of special indorsements. Just as a note payable to A cannot be transferred without the indorsement of A, so an instrument indorsed by the

payee A to X cannot be transferred by X without his indorsement. One should be careful in taking a note or check payable to order to see that it is properly indorsed.

A blank indorsement consists of the indorser's signature without more. The Statute says: "The signature of the indorser, without additional words, is a sufficient indorsement." "An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery." "The holder may convert a blank indorsement into a special indorsement. . . ." (Neg. Inst. Law, §§ 31, 34, 35.)

**Blank indorsements followed by special indorsements.**—Section 72. The holder of a bill or note which has been indorsed in blank and delivered to him may specially indorse it himself and transfer the instrument without completing the blank indorsement. In a case like this the instrument cannot again be transferred without the indorsement of the last indorsee. On the other hand, if one who holds an instrument indorsed specially transfers it by an indorsement in blank, the note or bill becomes transferable by delivery and in effect payable to bearer. For example, if John Jones, the payee of a note, transfers it by the blank indorsement, "J. Jones," so long as the indorsement remains in this form no further indorsement is necessary to a transfer of the note. But if Wm. Roe, to whom Jones delivered the note, transferred it by the special indorsement, "Pay to the order of John Doe (Sgd.), Wm. Roe," the indorsement of John Doe is necessary to a further transfer. But if John Doe indorsed in blank "John Doe," the instrument could again be transferred by delivery. The Statute states this rule in these words, "An instrument is payable to bearer . . . when the *only* or *last* indorsement is an indorsement in blank."

An instrument payable to bearer *on its face* may be specially indorsed by the holder. Does such a note cease to be transferable by delivery and require the indorsement of the special indorsee for its transfer? Is it like the case of an instrument payable to order which has been indorsed in blank and then specially indorsed? No. Its character as bearer instrument remains and it is still transferable by delivery without indorsement. But the liability of the special indorser exists only in favor of such holders as are the indorseees of his indorsee. For example, A, the holder of X's note, payable to bearer, transfers it to B by the special indorsement "Pay to B (Sgd.) A." B delivers the note to C without indorsing it. C, by delivery to him, becomes the owner of the note because it was payable to bearer, but he gets no rights against A as indorser. If B had indorsed the note to C, C might have looked for payment, not only to the maker X, but also to B as indorser.

The Statute provides:

"Section 40. Where an instrument originally payable to or indorsed specifically to bearer is subsequently indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement."



## CHAPTER VI

### NEGOTIATION (*Continued*)

**Qualified indorsements.**—Section 73. An indorsement may be either in blank or special; and it may also be either restrictive or qualified, or conditional. (Neg. Inst. Law, § 33.) The forms given below show the various kinds of indorsements. We have already dealt with special and blank indorsements. (Sections 71 and 72, Chapter V.)

(1. Indorsement in full)

Pay to George F. Wheaton or order.

Wm. R. Carpenter.

(2. Indorsement in blank)

George F. Wheaton.

(3. Qualified Indorsement)

Without recourse.

Fred S. Nichols.

(4. Conditional Indorsement)

Pay Geo. W. Terry or order on the completion of the  
Pine Creek Road.

R. Van Scoter.

(5. Restrictive Indorsement)

Pay Harvey Prentiss, or order for collection for my  
account.

George W. Terry.

Either a blank indorsement or a special indorsement may be qualified. The first example above is a qualified blank indorsement because it specifies no indorsee. If the words "Without recourse" had been written by Carpenter above his special indorsement to George F. Wheaton, you would have an example of a qualified special indorsement.

What is the purpose and effect of qualifying an indorsement? A simple blank or special indorsement not only transfers the instrument to the indorsee, but subjects him to an obligation to the indorsee and all subsequent holders to pay the instrument if the maker or acceptor does not. In other words the indorsement is a special kind of guaranty that the instrument will be paid. It may often happen that the holder of a note wishes to sell it or give it away without assuming this liability. A qualified indorsement affords the holder an appropriate method to accomplish his purpose. "A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument" (Neg. Inst. Law, § 38), and does not subject him to the regular liability of the ordinary indorser to pay if the maker does not.

An indorsement may be qualified by writing the words "Without recourse," or "Without recourse to me," which is the complete expression, or "Not to be liable as indorser," or "Without liability," or the phrase which used to be common "not holden." "Without recourse" are the words most usual today, but in the words of the Statute (§ 38) "any words of similar import" are sufficient.

A qualified indorsement transfers a bill or note just as effectually as an unqualified one, and the rights of the holder under a qualified indorsement against the maker or acceptor and indorsers, other than the qualified indorser,

are the same as if the indorsement were a simple blank or special indorsement.

It has been thought that the fact that the holder of a note is unwilling by his indorsement to assume the liability of an indorser ought to put a purchaser from him on his guard as to possible defenses of the maker and prevent the purchaser from becoming a *bona fide* holder. Such, however, is not the law. A holder under a qualified indorsement may be a *bona fide* holder just as well as if he held under an unqualified one. This is illustrated by the case of *Epler v. Funk* (8 Barr. 468) :

Rogers, J. This is an action by an indorser against the maker to recover \$100, payable to the order of Henry Hamer, twelve months after date. It is indorsed to J. M. Funk, without recourse. The defense is that the consideration of the note was for the right of vending Hoover's patent corn-stalk cutting machine in Dauphin County; that the machine was entirely worthless, and that defendant was induced to enter into the contract by combination, contrivance, and fraud.

The defendant contends that, under the circumstances exhibited on the face of the note, on the special indorsement and the facts given in evidence, he is entitled to make the same defense against the indorser as between the original parties to the note. The note is indorsed by the payee to the order of J. M. Funk, the plaintiff, "without recourse." This, it is said, is not in the usual course of business; that it was sufficient to put the indorser on his guard, and to lead him to suspect there was something wrong in the transaction, as between maker and payee. But although most usually notes go forth indorsed in blank, yet I cannot agree that such an indorsement affects

the negotiable quality of the paper. It shows only an unwillingness to be answerable for the solvency of the maker—a prudent precaution, particularly where, as here, the note has a long time to run before it matures. And this is the view taken of this fact in *Rice v. Stearns*. In that case, a promissory note was indorsed specially thus: "For value received, I order the contents of the note to be paid to A. B., at his own risk." Two points were ruled: 1st, That in an action on such a note, by the indorser against the maker, the promisee is a witness to prove the execution of the note; 2d, Which I take it is the case here, such special indorsement transfers the property of the note, with its negotiable quality, to the indorser.

**Conditional indorsements.**—Section 74. The fourth indorsement given at the opening of the chapter is a conditional indorsement. It is an order by Van Scoter on the maker to pay Geo. W. Terry upon condition that the Pine Creek Road is completed, viz., if and when the Pine Creek Road is finished. Under the express terms of such an indorsement Terry is entitled to nothing until the road is completed. It follows that if Terry's rights are conditional the rights of all those who take the note from him are likewise conditional. It also follows that if the road is not completed, Van Scoter, the indorser, is entitled to the money due upon the instrument. In consequence, if the road has not been completed, the maker must not pay to Terry or anyone who took the note from him, but must pay to Van Scoter. Further the maker must determine at his peril whether the condition has been fulfilled, and if he pays Terry before the road is done, he may be compelled to pay the note a second time to Van Scoter. Thus, in *Robertson v. Kensington* (4 Taunton 30), it appeared that R. Robertson was the payee of a bill accepted

by Kensington & Co., bankers, which he indorsed as follows:

Pay the within sum to Messrs. Clerk & Ross, or order, upon my name appearing in the 'Gazette' as ensign in any regiment of the line, between the 1st and 64th, if within two months from this date.

R. ROBERTSON.

The bill was indorsed in blank by Clerk & Ross and ultimately was transferred to the Bank of England, to which it was paid by the acceptors at maturity. The condition of the indorsement, however, had not been fulfilled; Robertson's name had not appeared in the "Gazette." Robertson thereupon sued the acceptors and they were compelled to pay the bill a second time.

The Statute has changed the law as stated above and applied in *Robertson v. Kensington*, as follows: "Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not." (Neg. Inst. Law, § 39.)

But the Statute does not make the condition in the indorsement of no effect. Although the maker or acceptor may disregard the condition, the conditional indorsee is bound by it. Thus, if he has received the money due on the instrument before the happening of the condition which entitled him to it, he is bound to hold the money for, and pay it to, the indorser. For example, if Terry received the money from the maker before the road was completed, he would be obliged to account to Van Scoter for the sum he had received. The Statute says: "But any person to whom an instrument so indorsed is negotiated, will hold

the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally." (Neg. Inst. Law, § 39.)

**Restrictive indorsements.**—Section 75. According to the Statute there are three kinds of restrictive indorsements.

"An indorsement is restrictive which either:

- "1. Prohibits the further negotiation of the instrument ; or
- "2. Constitutes the indorsee the agent of the indorser ; or
- "3. Vests the title in the indorsee in trust for or to the use of some other person." (Neg. Inst. Law, § 36.)

An example of the first kind, one prohibiting the further negotiation of the instrument, is, "Pay to H. Prentiss *only* (Sgd.) G. W. Terry." Such an indorsement gives Prentiss all of the rights of an ordinary indorsee except that of further negotiating the instrument. He is entitled to the money due upon the instrument, and may sue the maker or any of the indorsers, including his indorser, Terry, in case it is not paid. It should be noted that a special indorsement which does contain the words "or order," for example, "Pay H. Prentiss. (Sgd.) G. W. Terry," is not restrictive. "An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed." (Neg. Inst. Law, § 47.) "But the mere absence of words implying power to negotiate does not make an indorsement restrictive." (Neg. Inst. Law, § 36.)

One of the forms of indorsement most frequently encountered in business is the second kind of restrictive indorsement enumerated in the Statute: one constituting the indorsee the agent or trustee of the indorser. The last indorsement at the head of this chapter is an example. Other examples are: "Pay to H. Prentiss for my use.

(Sgd.) G. W. Terry"; "Pay to First National Bk. for collection. (Sgd.) G. W. Terry." Such an indorsement makes the indorsee the holder of the instrument; but by the very terms of the indorsement he holds the instrument and its proceeds when collected in trust for the benefit of the indorser. Since the fact that Prentiss or the First National Bank is not the beneficial owner, but is a trustee or agent for Terry, appears on the paper itself, no purchaser can claim to be a *bona fide* holder. Anyone buying after such an indorsement must hold the instrument or its proceeds, just as did the restrictive indorsee, in trust for the restrictive indorser, Terry. This does not mean, however, that a restrictive indorsee may not negotiate the instrument, but simply that anyone to whom he transfers it holds it subject to the rights of the restrictive indorser. In fact, such indorsements are most frequently used when indorsing a bill of exchange or check payable in a distant place to the home bank for the purpose of having it forwarded to another bank at the place of payment for collection.

There is one other peculiarity which distinguishes the position of this kind of restrictive indorsee from that of the ordinary indorsee: he may not sue this indorser in case the maker does not pay. The reason for this is obvious. If the restrictive indorsee could sue his indorser, he would hold the money recovered in trust for the indorser who could in turn recover it back.

The Statute states the rights of such a restrictive indorsee as follows:

- "1. To receive payment of the instrument;
- "2. To bring any action thereon that the indorser could bring;
- "3. To transfer his rights as such indorser."

(Neg. Inst. Law, § 37.)

"Pay to the order of Mary Hook in trust for her son, Charles Hook. (Sgd.) J. P. Haskins," is an example of the third variety of restrictive indorsements. The indorsee under such an indorsement stands in the same position as an ordinary indorsee except that he holds the note or its proceeds if sold or collected for the benefit of the beneficiary named. He may sue any of the parties to the instrument including the restrictive indorser. In this respect his rights differ from those of an indorser under the second kind of restrictive indorsement. But, as in that kind of indorsement, the form of the indorsement is notice to everyone dealing with the instrument of the right of the beneficiary. Such an indorsement, though it does not prevent the negotiating of the instrument by Mrs. Hook, the indorsee in the example given above, for practical purposes deprives the note of commercial value, for any purchaser would be responsible to Charles Hook in case his mother transferred the instrument in breach of trust.

**Delivery without indorsement.**—Section 76. If an instrument payable to order, or specially indorsed, is delivered by the holder without indorsement, the transferee does not become the owner or holder of the note. A bill or note payable to order can be transferred only by indorsement. What rights, if any, such a transferee obtains, depend upon the intention accompanying the delivery. If the holder did not intend to deliver the instrument at all, as in the case where it is stolen from him, the thief obtains no rights whatever. If the holder intended to deliver the instrument, but simply for the purpose of safekeeping, no rights in the paper pass to the transferee except the right to hold it at the will of the owner; if the holder intended to give or to sell the instrument to the transferee, his position is different. He is not the legal holder, to be sure, but he has acquired rights of which the holder cannot deprive



him. In the first two cases, where there was no intention to benefit the transferee, the owner could recover the instrument from the thief or the transferee whenever he chose. But here the owner has voluntarily parted with the instrument, intending to benefit the transferee. What rights has the transferee acquired? He has the right to collect the instrument, and, if it is not paid, to sue upon it in the right of the owner, just as if he were the owner's agent. He stands precisely in the position of his transferor and consequently holds the note subject to the same defenses as if it were still in the hands of his transferor. Thus, if Carpenter induces Cridler by fraud to make his note payable to Carpenter, and he sells it to Walker, an innocent purchaser, to whom the instrument is delivered without indorsement, although Carpenter cannot recover the note from Walker, Cridler has the same defense against Walker as he had against Carpenter. The fact that Walker was an innocent purchaser is immaterial. Of course, if Carpenter had *indorsed* to Walker, Walker could have recovered.

The Statute states this rule as follows:

"Transfer without indorsement; subsequent indorsement. § 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein."

Suppose, however, that subsequent to the purchase and delivery Walker learns of the fraud practiced by Carpenter, and then obtains the indorsement of Carpenter. Can he recover from the maker? The general rule is that he cannot. When he obtained legal title to the note, that is, when it was indorsed, he had knowledge of the fraud. *Whistler v.*

Forster (14 C. B. N. S. 248) is an illustration. That was an action against the drawer of a bill of exchange, payable to Griffiths & Co., or order, which had been sold and delivered (without indorsement) by that firm to the plaintiff on October 3. Griffiths & Co. had secured the bill from the drawer, the defendant, through fraud. Later, and after the plaintiff had notice of the fraud, Griffiths & Co. indorsed the bill. It was held the plaintiff could not recover. The judges said:

“Erle, C. J. The plea is, that the bill was obtained from the defendant by one Griffiths by means of fraud, and that it was indorsed to the plaintiff after he had notice of the fraud. The facts are shortly these. The instrument was a negotiable instrument, which had been fraudulently obtained from the defendant by Griffiths, and had been handed over by Griffiths to the plaintiff in part satisfaction of a debt of a larger amount. But Griffiths, at the time he so handed over the bill to the plaintiff, omitted to indorse it. Under these circumstances, the condition of things was this, that the plaintiff had at that time the same rights as if an ordinary chattel had passed to him by an equitable assignment; he would have all the rights which Griffiths could convey to him. Now, Griffiths having defrauded the defendant of the bill, he could pass no right by merely handing over the bill to another. According to the law merchant, the title to a negotiable instrument passes by indorsement and delivery. A title so acquired is good against all the world, provided the instrument is taken for value and without notice of any fraud. The plaintiff's title under the equitable assignment here, therefore, was to be rendered valid by indorsement; but at the time he obtained the indorsement he had notice that the bill had been fraudulently obtained by Griffiths from the defendant, and that Griffiths had no right to make the indorsement.

Assuming, therefore, that there may be conflicting equities between the plaintiff and the defendant, I think the right should prevail according to the rule of law, and that the plaintiff had no title as transferee of the bill at all.

"Willes, J. I concur with my lord as to both points. As to the second point, the general rule of law is undoubted, that no one can transfer a better title than he himself possesses: *Nemo dat quod non habet*. To this there are some exceptions, one of which arises out of the rule of the Law Merchant as to negotiable instruments. These, being part of the currency, are subject to the same rule as money; and if such an instrument be transferred in good faith, for value, before it is overdue, it becomes available in the hands of the holder, notwithstanding fraud which would have rendered it unavailable in the hands of a previous holder. This rule, however, is only intended to favor transfers in the ordinary and usual manner whereby a title is acquired according to the Law Merchant, and not to a transfer which is valid in equity according to the doctrine respecting the assignment of choses in action, now, indeed recognized, and in many instances enforced, by courts of law; and it is therefore clear that, in order to acquire the benefit of this rule, the holder of the bill must, if it be payable to order, obtain an indorsement, and that he is affected by notice of a fraud received before he does so. Until he does so, he is merely in the position of the assignee of an ordinary chose in action, and has no better right than his assignor. When he does so, he is affected by fraud, which he knew of before the indorsement.

"Keating, J. I am of the same opinion. The plaintiff sues as indorsee of the bill in question. The plea in substance is that the defendant was defrauded of it by the person to whose order it is made payable, and that the

plaintiff had notice of that fact before the instrument was indorsed to him. The question is, when was the bill first indorsed to the plaintiff. It must be recollected that the plaintiff is suing in a court of law, and that the right to sue in a court of law upon a negotiable instrument is not complete without a written indorsement. Now, before the plaintiff's right to sue was rendered complete by a written indorsement, he had notice of the fraud. The subsequent indorsement, therefore, transferred no title to sue." (Pp. 343-345, Vol. I, Ames Cases.)

The rule of *Whistler v. Forster* is stated in the Negotiable Instruments Law as follows:

"For the purpose of determining whether the transferee (without indorsement) is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made." (Neg. Inst. Law, § 49.)

We have now seen that the transferee to whom an instrument has been given or sold without indorsement is entitled to the paper against his transferor, and we have discussed his rights against the maker both before and after indorsement. In a case where the instrument has been sold to him, he has a further right, viz., to compel the transferor to indorse. "The transferee acquires in addition the right to have the indorsement of the transferor." (Neg. Inst. Law, § 49.)

## CHAPTER VII

### HOLDER IN DUE COURSE

**Legal defenses distinguished from personal or equitable defenses.**—Section 77. If you are the payee of a promissory note payable to your order or to bearer, which has been delivered to you in exchange for value paid, you may transfer the note to whom you please by employing the proper form, that is, by indorsement and delivery if payable to order; by delivery simply if payable to bearer. Whether the transferee pays you anything is immaterial. Though you *give* the paper away your transferee may enforce the note against the maker. This is because the payment of value or the giving of a consideration by the transferee is *not* an essential part of the act of transfer. A bill or note is transferred either by indorsement or by delivery. Nothing more is required.

In the case supposed in the preceding paragraph where the payee gives the instrument away, do the transferee's or holder's rights against the maker differ from the rights he would have acquired had he paid money or delivered property to the payee for the note? Not at all. An indorsee or bearer who pays nothing gets every right against the maker that exists. The indorsee or bearer who pays value can get no more. But, it is suggested, suppose you had defrauded the maker of the note as payment for a worthless patent right fraudulently represented to him to be a valuable invention. In such a case would you be entitled

to recover against the maker? Certainly not. If you *gave* the note away would your transferee be entitled to recover? No. If you sold the note to me for value and I knew nothing of the fraud practiced, could I recover? Yes. How then can it be said that a holder who pays value and has no notice gets no greater rights than a holder to whom the instrument is given? Let us see. The reason why you cannot recover on the note is that, although it is a perfectly valid note intentionally signed and delivered by the maker to you as payee, it would be the grossest injustice to allow you to enforce an obligation thus secured by fraud. The same reason applies to your transferee. Although he became the legal holder and owner of the note by the transfer, since he parted with nothing for the note, he will be no poorer if not allowed to enforce the note than he was before he received it; and it is more just, therefore, not to allow him to enforce the note and thereby enrich himself at the expense of the defrauded maker. But if you sell the note to me and I part with money or property in exchange for it in good faith and in ignorance of the fraud practiced by you, why should I not enforce the legal obligation I have acquired? That I have acquired the obligation of the maker to pay is clear, because you owned that obligation and transferred it to me. It is true *you* could not enforce it because it was *unjust for you* to do so. It is true the person to whom you *gave* the note could not enforce it because he gave nothing for the obligation and to allow him to enforce it would be allowing him to enrich himself at the expense of the defrauded maker. But do either of these reasons apply to me? I committed no fraud and I paid value in good faith. I owe the obligation of the maker. I was guilty of no unconscientious conduct in receiving it, and I parted with value for it.

It is clear, therefore, that an innocent purchaser for value

gets no greater rights against the maker than one to whom the instrument is given. The difference between the position of the innocent purchaser for value and of one to whom the instrument is given is that the maker has the *defense* of injustice against the latter, but not against the former.

It follows that being an innocent purchaser for value does not better the position of a holder unless he has acquired ownership in the negotiable instrument. If he has acquired ownership, by transfer from the payee innocently and for value, then the defense that it is unjust for the fraudulent payee to enforce the instrument is not available against him. The doctrine of innocent purchaser for value *cuts off defenses* against the payee based upon principles of justice and not those based upon rules of law governing the form, inception and transfer of negotiable instruments.

If the payee has no legal rights against the maker because of failure to comply with the legal rules as to form, inception, etc., an innocent purchaser for value from him gets no rights against the maker whatever.

If you turn to Section 40, Chapter IV, you will find a case which illustrates the point under discussion. In that case the court said:

"The reasoning of the above cases is entirely satisfactory and conclusive upon this point. The inquiry in such cases goes back of all questions of negotiability, or of the transfer of the supposed paper to a purchaser for value, before maturity and without notice. It challenges the origin or existence of the paper itself; and the proposition is to show that it is not in law or in fact what it purports to be, namely, the promissory note of the supposed maker. For

the purpose of setting on foot or pursuing this inquiry, it is immaterial that the supposed instrument is negotiable in form, or that it may have passed to the hands of a *bona fide* holder for value. Negotiability in such cases presupposes the existence of the instrument as having been made by the party whose name is subscribed; for, until it has been so made and has such actual legal existence, it is absurd to talk about a negotiation, or transfer, or *bona fide* holder of it, within the meaning of the Law Merchant. That which, in contemplation of law, never existed as a negotiable instrument cannot be held to be such; and to say that it is, and has the qualities of negotiability because it assumes the form of that kind of paper, and thus to shut out all inquiry into its existence, or whether it is really and truly what it purports to be, is *petitio principii*—(begging the question altogether). It is, to use a homely phrase, putting the cart before the horse, and reversing the true order of reasoning, or rather preventing all correct reasoning and investigation, by assuming the truth of the conclusion, and so precluding any inquiry into the antecedent fact or premise, which is the first point to be inquired of and ascertained. For the purposes of this first inquiry, which must always open when the objection is raised, it is immaterial what may be the nature of the supposed instrument, whether negotiable or not, or whether transferred or negotiated, or to whom or in what manner, or for what consideration or value paid by the holder. It must always be competent for the party proposed to be charged upon any written instrument, to show that it is not his instrument or obligation. The principle is the same as where instruments are made by persons having no capacity to make binding contracts, as by infants, married women, or insane persons; or where they are void for other cause, as for usury; or where they are executed as by an agent, but without authority to bind the supposed principal. In these and all like cases, no



additional validity is given to the instruments by putting them in the form of negotiable paper."

In Section 50, Chapter IV, are further illustrations of the rule. The cases referred to in that section are cases where a blank piece of paper bearing defendant's signature, or an instrument incomplete in form bearing defendant's signature, got out of the defendant's hands without any intention on his part that the paper should be turned into a negotiable instrument. It was held the defendant was not liable, though the paper had been negotiated to an innocent holder for value. One of these cases, *Caulkins v. Whisler* (29 Ia. 495), is given below:

*Caulkins v. Whisler.*

(Supreme Court of Iowa, 1870. 29 Iowa, 495,  
4 Am. Rep. 236.)

Action upon a promissory note; defense, that the instrument is a forgery. The cause was submitted to the court without a jury. The court found the following facts: Defendant entered into a contract with one Smith to sell for him, as his agent, grain seeders. At Smith's request, defendant signed his name upon a blank piece of paper, which Smith was to send to the manufacturers of the seeders, that they might know defendant's signature upon orders which he should make upon them for the machines. The signature was made for no other purpose. The instrument in suit was printed over the signature of defendant, so obtained without his knowledge and consent, and the stamp in the same manner attached and canceled. The plaintiff purchased the note before maturity, for a valid consideration, and without knowledge of any matter connected with its execution. Upon these findings, the court

held that the note is a forgery and void, and that plaintiff is not entitled to recover thereon. Plaintiff appeals.

Beck, J. A holder of negotiable paper, acquired before dishonor, is not protected against defenses that make void the instrument. He can have no claim upon forged paper against the person whose name is falsely affixed thereto as the maker, and who is without fault as to the forgery and the taking of the paper by the holder. 1 Parsons, "Bills and Notes," 75, and authorities cited.

Is the note sued upon a forged instrument? "The making or alteration of any writing with fraudulent intent, whereby another may be prejudiced, is forgery." *State v. Wooderd*, 20 Iowa, 542; Revision, No. 4253. In order to constitute the offense of forgery, it is not necessary that the signature of the instrument be false. The instrument may be altered so that it is not the instrument signed by the maker, and, if this be fraudulently and falsely done, it is forgery. So if words be added to change its effect, with like intent it is forgery. In the case before us the instrument was falsely and fraudulently made over the genuine signature of defendant, which was not obtained for the purpose of binding defendant by any contract. It is evident that this differs, in no respect, from the cases mentioned, and that the note is a forgery and void. (*See 2 Parsons, "Bills and Notes," 584.*)

The case differs materially in its facts from the cases cited in support of plaintiff's right to recover. In those cases blanks were filled up contrary to the direction of the maker, or without his authority. But in all of such cases the makers intended to execute an instrument that should be binding upon them. Blanks were filled up contrary to the authority given by the makers, or in some other way

the instruments were made so that they did not correspond with the intention of the makers; but in all such cases there were makers and instruments, and through the frauds of those to whom the instruments were intrusted they were thus made to be of different effect than was designed by the makers. In these cases, it is correctly held that, while the parties perpetrating the fraud in some cases may have been guilty of forgery, yet the makers were bound upon the instruments, as against holders in good faith and for value. The reason is obvious. The maker ought rather to suffer, on account of the fraudulent act of one to whom he intrusts his paper, or who is made his agent in respect of it, than an innocent party. The law esteems him in fault, in thus putting it in the power of another to perpetrate the fraud, and requires him to bear the loss consequent upon his negligence. In the case under consideration no fault can be imputed to the defendant. He did not intrust his signature to the possession of the forger for the purpose of binding himself by a contract. He conferred no power upon the party who committed the crime to use it for any such purpose. He was not guilty of negligence in thus giving it, for it is not unusual, in order to identify signatures, and for other purposes, for men thus to make their autographs. The defendant cannot be regarded as being so far in fault in the transaction that he ought to be required to bear the loss resulting from the crime.

In our opinion the decision of the circuit court is in accord with the law, and is therefore affirmed.

Other instances of defenses which are good against an innocent holder for value because they show that the payee from whom the holder bought had no rights on the instrument are as follows:

**Infancy.**—It is a general rule of law that a contract made by persons under legal age is void or voidable, that is, cannot be enforced against him without his assent. So an infant maker of a note has the defense of infancy against an innocent holder for value.

**Insanity.**—Like the contracts of an infant, those of an insane person or idiot are void or voidable, and the defense is available not only against the payee but against all purchasers from him.

**Forgery.**—If one's name is signed to a negotiable instrument without his authority, he is not bound. A negotiable instrument must be signed by the maker, drawer, or indorser, or by his *authorized* agent.

**Illegality.**—If a statute prescribes that certain notes shall be null and void, they are not enforceable in the hands of any holder. Statutes of this kind sometimes exist with reference to instruments given on Sunday, instruments given for gambling debts, instruments which are usurious. Such statutes are, however, infrequent.

These defenses which are good against any holder are called legal defenses.

The defenses which are not good against innocent purchasers for value are called personal or equitable because they are good only against persons whose conduct with respect to the paper has made it inequitable or unconscientious to enforce it. Instances of such defenses are:

**Fraud.**—Examples of fraud as a personal or equitable defense are: the case discussed at the beginning of this assignment; and the case in Section 43, Chapter IV.

**Duress.**—If a payee induces the making and delivery of a note by the maker through force, threats of force, or fear, this conduct of the payee, called duress, which, although it does not interfere with the legal inception of the note, does make it unconscientious for him to enforce it, is a personal or equitable defense.

**Absence of voluntary delivery.**—This is a personal or equitable defense. See Section 44, Chapter IV. (Absence of Consideration is a personal or equitable defense. See Neg. Inst. Law, § 28.)

Delivery upon condition is a personal or equitable defense. See Section 46, Chapter IV.

**Illegality.**—If a statute forbids the making of a note under certain conditions, as, for example, on Sunday, or for a gambling debt, or for liquor, but does not declare the note void, then the note may be enforced by an innocent purchaser though not by the payee.

To sum up, the following are legal defenses available against any purchaser from the payee even though he be an innocent purchaser for value:

- Infancy
- Insanity
- Forgery
- Illegality (under some statutes)
- No intentional delivery of incomplete instrument as such.

The following are personal or equitable defenses against innocent purchasers, though good against the payee:

- Fraud

Duress

Illegality (under most statutes)

No voluntary delivery

That the delivery was upon condition

Absence of consideration.

**What is implicit in the phrase "holder in due course."**—Section 78. Now that we have distinguished between legal and equitable defenses, and have seen that the latter are not available against an innocent purchaser for value, we must examine in detail the qualifications of an innocent purchaser for value, or a "holder in due course," as such a purchaser is called in the statute. We have already seen that the words "holder" and "purchaser" assume the existence of a negotiable instrument which may be purchased and owned or held by a holder. No one can be the holder of a negotiable instrument which has never had a legal inception as a negotiable instrument. We have also assumed in our discussion that there must have been a valid *transfer* by indorsement or by delivery as the case might be. No one can be an owner or holder of a negotiable instrument unless and until it has been transferred to him in the form prescribed by law. For instance, if you were the payee of a promissory note payable to your order, and I stole the unindorsed note from you and sold it to X, an innocent purchaser, after forging your indorsement, X would get no rights whatever in the instrument. An instrument payable to order can only be transferred by the indorsement of the payee. In the case supposed, the instrument did not bear your indorsement, and my forgery and delivery of the note to X were ineffective to give him any title to the paper, that is, to make him the holder of it. Bearing in mind that in the following discussion we are assuming (1) the existence of a negotiable instrument, and (2) that it has been legally transferred to one who has by the transfer

become the holder of it, we may proceed with our examination of the qualifications which entitle a holder to the position of a holder in due course.

**Good faith. Actual notice.**—Section 79. A holder to be a holder in due course must have acquired the instrument in good faith and without notice of the defenses which the maker or acceptor has against the payee. If one pays value to a payee who has practiced fraud upon the maker, knowing of the fraud, to allow him to recover would be affording a means by which he could make a gift to the fraudulent payee at the ultimate expense of the defrauded maker. To deny him a recovery is either penalizing his impudence or folly, or punishing his attempted coöperation in the fraud of the payee.

A holder is one in good faith and without notice when as a matter of fact he acted in actual good faith and without actual knowledge. Neither gross carelessness nor blundering stupidity are inconsistent with actual good faith. "If value is given for a bill, it is not enough to show that there was carelessness, negligence, or foolishness in not suspecting that the bill was wrong, when there were circumstances which might have led to such suspicion. All these are matters which tend to show that there was dishonesty in not doing it; but they do not in themselves furnish a defense to an action on a bill of exchange. I take it that it is necessary to show, whether in the case of a party who is solvent and *sui juris*, or as against the case of a bankrupt, that the person who gave value (whether great or small) for the bill was affected with notice that there was something wrong about it when he took it; but he need not have had notice of what the particular wrong was. If a man, knowing that a bill was in the hands of a person who had no right to it, should think that perhaps the

holder had stolen it, when in truth the latter had obtained it by false pretenses, I think he would be taking it at his peril. But such evidence of carelessness or blindness might, with other evidence upon the question, which appears to be the real one, show he knew that there was something wrong in the bill. If he was (so to speak) honestly blundering and careless, he would not be disentitled to recover; but if it appeared that he must have had a suspicion of something wrong, and that he refrained from asking questions, not because he was an honest blunderer or stupid man, but because he thought in his secret mind: 'I suspect there is something wrong, and if I ask questions it will be no longer suspecting, but knowing, and then I shall be unable to recover,' I think that is dishonesty." (Jones *v.* Gordon, 2 App. Cas. 616.) § 52, subdivision 4, and § 56 of the Negotiable Instruments Law state the law in accordance with the doctrine stated above.

**Constructive notice.**—Section 80. To the rule that bad faith and knowledge mean actual bad faith and actual knowledge, there is a limitation. Every person taking a negotiable instrument is treated as if he knew every fact disclosed by the face of the paper. Thus, a holder who purchases a bill or note after the date it falls due, is not a holder in due course. The face of the paper shows the time when payment is due. Under the rule just stated, the holder is treated as if he knew the paper was overdue at the time of his purchase, and the fact that the commercial paper is outstanding and unpaid after its maturity is such a circumstance of suspicion that no one purchasing in the face of it can be a holder in good faith. In *Brown v. Davies* (3 Term Rep. 80), Davies made a note payable to Sandal, or order, due on November 13. The note was not paid at maturity, but some weeks later Davies paid the amount to Sandal, but did not receive the instrument from him. San-



dal then transferred the note to the plaintiff, who paid value and had no notice of the payment. It was held that the defense was nevertheless available against the plaintiff, because he had received the instrument after its maturity. One of the judges said :

“There is this distinction between bills indorsed before and after they become due. If a note indorsed be not due at the time, it carries no suspicion whatever on the face of it, and the party receives it on its own intrinsic credit. But if it is overdue, though I do not say by law it is not negotiable, yet certainly it is out of the common course of dealing, and does give rise to suspicion. Still stronger ought that suspicion to be when it appears on the face of the note to have been noted for nonpayment, which was the case here. But generally, when a note is due, the party receiving it takes it on the credit of the person who gives it to him. Upon this ground it was that, in the case in Cornwall, I held that the defendant, who was the maker, was entitled to set up the same defense that he might have done against the original payee ; and the same doctrine has been often ruled at Guildhall. A fair indorsee can never be injured by this rule ; for, if the transaction be a fair one, he will still be entitled to recover. But it may be a useful rule to detect fraud whenever that has been practiced.” (Upon Lord Kenyon’s appearance to dissent from the generality of the doctrine held by Mr. Justice Buller, he proceeded to observe) : “My Lord thinks I have gone rather too far in something that I have said, but it is to be observed that I am speaking of cases where the note has been endorsed after it became due, when I consider it as a note newly drawn by the person endorsing it.”

Another said : “I think the rule laid down by my Brother Buller, in the case in Cornwall, is a very safe and proper

one: That, where a note is overdue, that alone is such a suspicious circumstance as makes it incumbent on the party receiving it to satisfy himself that it is a good one: otherwise much mischief might arise." § 52, subdivision 2, of the Negotiable Instruments Law expressly covers this point.

Another class of cases in which the rule of constructive notice is invoked includes cases in which one, acting without any actual knowledge of his debtor's breach of faith, takes negotiable paper signed by the debtor in the name of his principal or employer, in payment of the debt. In such a case, the creditor is charged with knowledge that the debtor is exceeding his authority as agent in giving his principal's note in payment of a personal debt. However, if the face of the paper does not disclose the irregularity of the agent's conduct, a purchaser is not charged with knowledge of the agent's breach of authority, and he may be a holder in due course. Thus, in *Cheever v. Railroad Co.* (150 N. Y. 59), it appeared that Frost, the president of the railroad, executed a promissory note in the following form:

Greenville, Pa., Feb'y 24, 1888.

\$5000

Four months after date the Pittsburg, Shenango and Lake Erie Railroad Company promises to pay to the order of John T. Bruen five thousand dollars at the American Exchange National Bank, New York City. Value received.

Attest: E. S. Templeton, Secretary.

THE PITTSBURG, SHENANGO & LAKE ERIE RAILROAD COMPANY,  
By M. S. Frost, President.

Bruen, the payee named in the note, was Frost's private secretary, and immediately indorsed the instrument in blank and delivered it to Frost. Bruen acted merely as a "dummy" in the transaction. Frost transferred the note to the plaintiff for a loan for the personal benefit of Frost.

It was held that the plaintiff could recover on the note from the railroad. In its opinion the Court said: "The principle that applies in a case where an officer of a corporation makes the corporate obligation payable to himself, and then attempts to deal with it for his own benefit, does not aid in solving the question in this case. When paper of that character is presented by the officer or agent of the corporation, it bears upon its face sufficient notice of the incapacity of the officer or agent to issue it. . . . Here the officer was not dealing with corporate notes payable to himself, but with notes that had been regularly issued, so far as appeared from their face, to a stranger."

**Value.**—Section 81. In order to constitute one a holder in due course, not only must he purchase without either actual or constructive notice of defenses to the instrument, but he must have parted with value therefor. It would be unjust to allow one to whom a fraudulent payee had delivered the note as a gift to enforce it and thereby enrich himself at the expense of the defrauded maker,

The value which a purchaser must part with in order to be a holder in due course may be money, property, the performance of services, or the surrender of a legal right. For example, if you owe me \$100 and I accept a bill or note in *payment* of the debt, I have parted with value for the note by surrendering my legal right to sue you upon the debt. Or, if instead of taking the note in *payment* of your debt, I take it upon the agreement that I will not sue you on the debt unless and until the note is unpaid, I have parted with value by surrendering, during the time that the note is to run, my right to sue you. If I took the note from you simply as security for your debt, that is, neither in payment nor under an agreement not to sue you until its maturity, it was a much debated question whether I became

the holder for value or not. In most jurisdictions it is held that I did. The leading case for this view is *Railroad Co. v. Bank* (102 U. S. 14), in the United States Supreme Court. The railroad, wishing to raise money, executed a promissory note payable to its treasurer, who indorsed in blank and delivered it to Hutchinson & Ingersoll, note brokers, for the purpose of having the instrument sold by them for the benefit of the railroad. Hutchinson & Ingersoll were indebted to the bank, and, in breach of trust, delivered the note to their creditor, the bank, which took it in good faith as *security* for the debt but not in payment thereof nor under an agreement not to sue. The bank sued the railroad, which set up as a defense the fraud of its agents in pledging the note for their personal debt, but the court held that the bank was a holder for value and could recover. Mr. Justice Harlan in his opinion said:

“Our conclusion, therefore, is that the transfer before maturity of negotiable paper, as security for antecedent debt merely, without other circumstances, if the paper be so indorsed that the holder becomes a party to the instrument, although the paper is without express agreement by the creditor for indulgence, is not an improper use of such paper, and is as much in the usual course of commercial business as its transfer in payment of such debt. In either case, the *bona fide* holder is unaffected by equities or defenses between prior parties, of which he had no notice. This conclusion is abundantly sustained by authority. A different determination by this court would, we apprehend, greatly surprise both the legal profession and the commercial world.”

**Amount of value.**—Section 82. The amount of value which the holder pays does not as a rule affect his position as a holder for value. One who exchanges a \$50 horse for

a \$100 promissory note is a holder for value of the note. The same would be true though the horse were worth only \$25. But as the value given decreases, the inference of bad faith and knowledge on the part of the purchaser increases. For example, in *De Witt v. Perkins* (22 Wis. 473), the plaintiff paid \$5 for a \$300 note of the defendant who had been defrauded of the note by the payee. The defendant was solvent. It was held that the plaintiff could not recover. The transaction showed that the plaintiff acted in bad faith, and had notice of the fraud of the payee. In *Lay v. Wisman* (21 N. J. L. 665), the plaintiff paid \$80 for a \$150 note which had been secured from the maker by fraud. It was held that the amount of value paid did not disentitle the plaintiff from recovering the face value of the note from the maker. The Court said:

"It is an elementary principle that the equities existing between the maker and the payee cannot be set up against the indorsee in the ordinary course of business, for a valuable consideration, in good faith, and before maturity.

"There is some confusion and uncertainty in the authorities as to whether one who purchases a note for less than its face can be considered a *bona fide* holder. *Bailey v. Smith*, 14 Ohio St. 396, 84 Am. Doc. 385, and cases cited. In this State, however, the rule is settled that one who purchases a note at a discount may be a *bona fide* holder and entitled to recover thereon. *Sully v. Goldsmith*, 32 Iowa, 397. And this view has the support of both principle and authority. *Bailey v. Smith*, *supra*; *Gould v. Legee*, 5 Duer (N. Y.) 270. The amount of the consideration paid may become important in determining whether the holder is a *bona fide* indorsee.

"Where a note for \$300, on a responsible person, and nearly due, was sold for \$5, it was held that the indorsee was not a holder in good faith for value, and that he could

not recover thereon, the note being without consideration. *De Witt v. Perkins*, 22 Wis. 473. The amount of consideration paid becomes an important element, in connection with the responsibility of the maker, the rate of interest, the time of maturity, and the circumstance of the transfer in determining the *bona fides* of the holder. And if he is not a purchaser in good faith, he takes the note subject to the equities growing out of the note, existing between the maker and the payee. When, however, the consideration paid, and the other circumstances of the purchase, show that the indorsee is a *bona fide* holder, in the usual course of business, there is no logical principle upon which his recovery from the maker can be reduced below the amount of the note.

"The defense that a note has been obtained fraudulently or without consideration does not avail against a *bona fide* holder. If, however, the recovery of such holder may be limited to the amount paid, it is apparent that the defense does avail; for without such defense he would recover the amount evidenced by the note.

"There is a class of cases in which the holder has been allowed to recover only the amount advanced upon the note. But it is believed that they will nearly, if not quite, all be found to be cases in which the holder is not a purchaser in the ordinary course of business. Thus, in *Allaire v. Hartshorne*, 21 N. J. Law, 665, 47 Am. Doc. 175, cited in 1 Parsons, on Bills and Notes, p. 191, note 1, the note was deposited with the holder as collateral security for a pre-existing debt. The plaintiff was the owner of the note only to the extent of the debt secured. If he had recovered more, he would have held the surplus in trust for the payee. But the payee was not entitled to recover, the note, as between him and the maker, being invalid. Hence it was held, and very properly, that the holder could recover only the amount of his debt."

**Notice before value paid.**—Section 83. Although we have seen that a purchaser of a \$100 negotiable instrument for \$25 may be a holder in due course and recover the full face value of the paper, if a holder receives notice of the maker's defense before he has actually paid the agreed price of the note, he is not a holder in due course. It is not only the acquisition of the instrument, but the payment of value therefor, which entitles a holder to the position of a holder in due course. So, also, one who has paid over only a part of the agreed price before notice can recover from the defrauded maker only as much as he paid before receiving notice. In *Dresser v. Construction Co.* (93 U. S. 92), one Irwin by means of fraud induced the Construction Company to make and deliver to him as payee three promissory notes aggregating \$10,000. Irwin sold and indorsed the instruments to the plaintiff, who paid \$500 in cash and promised to pay the balance of the purchase price. Before he had done so, he received notice of the maker's defense. It was conceded that the plaintiff was entitled to recover from the Construction Company the \$500 paid before notice, but the plaintiff claimed the face of the notes. His claim was disallowed, the court saying:

"The argument of the plaintiff in error is that negotiable paper may be sold for such sum as the parties may agree upon, and that, whether such sum is large or small, the title to the entire paper passes to the purchaser. This is true; and if the plaintiff had bought the notes in suit for \$500, before maturity and without notice of any defense, and had paid that sum, or given his negotiable note therefor, the authorities cited show that the whole interest in the notes would have passed to him, and he could have recovered the full amount due upon them."

The Negotiable Instruments Law, § 54, states the rule as follows:

"Where the transferee received notice of any infirmity in the instrument or defect in the title of the person negotiating the same, before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him."

**Transferee of holder in due course.**—Section 84. If negotiable paper once gets into the hands of a holder in due course and the personal or equitable defenses of the maker are cut off, then a transferee who obtains title to the instrument from him may recover upon it, even though the transferee pays nothing, and has actual knowledge of the maker's defense, or takes after maturity and consequently with constructive notice. Any other rule would deprive the holder in due course of one of the incidents of ownership in negotiable paper, viz., the right to dispose of the paper by sale or gift to whomever he chooses. There is, however, an exception to this rule: if the holder in due course retransfers the instrument to the guilty payee or to anyone who participated with him in the fraud on the maker, he may not recover. The rule, the exception and the reasons are well stated in *Kost v. Bender* (25 Mich. 515), as follows: "It is perfectly true, as a general rule, that the *bona fide* holder of negotiable paper has a right to sell the same, with all the rights and equities attaching to it in his own hands, to whomever may see fit to buy of him, whether such purchaser was aware of the original infirmity or not. Without this right he would not have the full protection which the Law Merchant designs to afford him, and negotiable paper would cease to be a safe and reliable medium for the exchange of commerce. For, if one can stop the



negotiability of paper against which there is no defense, by giving notice that a defense once existed while it was held by another, it is obvious that an important element in its value is at once taken away. But I am not aware that this rule has ever been applied to a purchase by the original payee, nor can I perceive that it is essential to the protection of the innocent indorsee, that it should be. It cannot be very important to him that there is one person incapable of succeeding to his equities, and who consequently would not be likely to become a purchaser. If he may sell to all the rest of the community, the market value of his security is not likely to be affected by the circumstance that a single individual cannot compete for its purchase, especially when we consider that the nature of negotiable securities is such that their market value is very little influenced by competition. Nor do I perceive that any rule or principle of law would be violated by permitting the maker to set up this defense against the payee, when he becomes indorsee, with the same effect as he might have done before it had been sold at all, or that there is any valid reason against it."

Negotiable Instruments Law, § 58, provides:

"In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud, duress, or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to such holder."

## CHAPTER VIII

### OBLIGATIONS OF PARTIES—MAKER AND ACCEPTOR

**Promise of maker and acceptor.**—Section 85. When a promissory note is made it shows on its face the maker's promise, i. e., the contract obligation which he has assumed by making the instrument. "On Jan. 1, 1912, I promise to pay X or his order, \$1,000," is, when signed, a complete note. Various additional stipulations for interest, for attorney's fees, etc., may be incorporated in the instrument; but when the instrument is completed it shows on its face the obligation of the maker. The Negotiable Instruments Law, § 60, says: "The maker of a promissory note by making it engages that he will pay it according to its tenor."

The drawee of a bill of exchange is under no obligation until he accepts, but when he does accept and thereby becomes liable as acceptor his obligation as such, like that of a maker of a note, appears on the face of the instrument.

Jan. 1, 1910.  
Six months after date pay to the order of Crawford or order, \$100.  
To John Jones,  
Eau Claire, Wis.

*Accepted  
John Jones*

JOHN SMITH,

In the above instrument the words, "Accepted, John Jones," written across the face of the order directing him to pay six months after date \$100 to Crawford or his order, are an express assent to the order, and, therefore, in effect a promise on his part to pay Crawford or order

\$100 six months after date. The acceptance is quite as clear as if Jones had written at the bottom of the bill the following: "I promise to pay Crawford or order \$100 six months after date (Sgd.) John Jones." If Jones gave a qualified acceptance, for example, "Accepted, payable *nine* months after date (Sgd.) John Jones," his promise would still be clear from the face of the paper: "I promise to pay as directed in this bill of exchange, *except* that I will pay nine instead of six months after date of this bill." In other words, just as the maker of a note engages or promises by making a note that he will pay it according to its tenor or terms, so an acceptor if he accepts generally, engages that he will pay the bill according to the tenor or terms of the order, or if he accepts by a qualified acceptance, engages that he will pay according to the tenor of the bill as *modified* by the terms of his acceptance. (*See* Neg. Inst. Law, § 62.)

**Presentment and demand of payment by the holder not necessary to hold the maker or acceptor.**—Section 86. It is clear from the foregoing that the obligation of the acceptor is the same as the obligation of the maker and that both may be considered together. One of the first requisites of a bill or note is that it shall be unconditional. The acceptor or maker must be absolutely obliged to pay at maturity without the performance of any act by the holder or anyone else. If that is not the obligation disclosed on the face of the paper, the instrument is not a negotiable instrument. A remarkable rule has resulted from an unreasonable application of this principle. It is not necessary for the holder of a negotiable instrument to present the paper to the acceptor or maker and demand payment. Thus, in the case of a note dated January 1 and payable six months after date, it is the duty of the maker on July 1 to hunt up the holder and pay him. If he does

not succeed in finding the holder before July 2, then the holder may begin an action against him on the note and as an incident of the action recover the legal costs, even though the maker was perfectly ready, willing, and anxious to pay the note when due. When it is remembered that a negotiable instrument is usually transferred from one holder to another, the great hardship of this rule is apparent. The hardship is ameliorated in actual business by the fact that the holder of a note generally notifies the maker where the holder or his agent can be found, more usually by placing the instrument in a bank for collection, which as agent for the holder notifies the maker that the bank holds his note or his acceptance for payment. This practice is, however, purely voluntary on the part of the holder and he may, if he sees fit, wait for the maker to come to him on the day of maturity, and, if he does not do it, bring an action on the following day, that is, as soon as the maker is in default.

**Not even in case of demand instruments.**—Section 87. Even if a note is expressly made payable at a particular place, as “at the Commercial Bank of Madison,” or “at my office, 512 State Street, Madison, Wis.,” it is not the duty of the holder to present the paper at the place named in the note and to demand payment there. It is still the duty of the maker to find the holder, whoever he is and wherever he may be, and tender payment to him. The same rule holds good with respect to instruments payable on demand, and also those payable at sight, for by § 7 of the Negotiable Instruments Law, instruments payable at sight are treated as payable on demand. In other words, an instrument payable on demand is due *without* demand. For example, the following instrument would not have to be presented for payment by the holder, notwithstanding the italicized words:

*On Demand (or at sight)* I promise to pay X or order \$100 at the *Commercial National Bank of Madison*.

(Sgd.) J. JONES.

The rule has to some extent been modified by the Negotiable Instruments Law as adopted in most states, which, while expressly providing that presentment is not necessary, does provide that where an instrument is on its face payable at a particular place, if the maker is able and willing to pay it at the specified place, on the day of maturity, such ability and willingness shall be equivalent to a tender. "Shall be equivalent to a tender" means that ability and willingness to pay at the place specified shall end the liability of the maker to pay interest on the instrument, and his liability to pay the cost of an action at law if one is brought. The Statute reads:

"Presentment for payment is unnecessary in order to charge the person primarily liable (acceptor or maker) on the instrument. *But if the instrument is, by its terms, payable at a special place, and he is willing and able to pay it there at maturity, such ability and willingness are equivalent to a tender of payment on his part.*"

**When negotiable instruments mature.**—Section 88. The obligation of the maker or acceptor being an unconditional one to pay at maturity, it becomes important to ascertain when negotiable instruments mature. According to the custom of merchants and the rule of the Common Law adopted from the custom, instruments payable at a certain date, or at sight, were entitled to three days of grace. A note payable on July 1, or a note dated January 1, and payable six months after date, would be due and payable July 4, and overdue and dishonored on July 5. A note payable "at sight" was due the third day after the day of

sight. Instruments payable "on demand," however, were not entitled to grace but were due without demand the moment they were delivered. Thus, if at nine o'clock in the morning I made a note payable to you on demand, without any demand whatever you could bring an action against me on the note at ten o'clock the same morning. This rule, however, is so manifestly unjust that it is not applied to bank notes or certificates of deposit which are promissory notes payable on demand. (*Shute v. Bank*, 136 Mass. 487.) But as just stated, instruments other than demand instruments were not payable until the third day after the day specified in the instrument for payment.

The law allowing days of grace has been abolished by the Negotiable Instruments Law, in § 85, as follows: "Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon a Sunday or a holiday, the instrument is payable on the next succeeding business day."

The result of this section and of the section making instruments payable "at sight," payable on demand (§ 7) is a very simple rule. An instrument payable on July 1 is due on that day; one payable thirty days after date is due on the thirtieth day after date of the instrument; one payable ten days after the death of my father, on the tenth day after my father's death; one payable "on demand," (except bank notes and certificates of deposit) or "at sight," is due forthwith, that is, as soon as it is delivered by the maker to the payee.

**When negotiable instruments become overdue.**—Section 89. We have seen that the obligation of the maker is an unconditional one to pay on the day of maturity; and we have seen the rule for determining when the day of

maturity of the several kinds of instruments arrives. We should note that the maker or acceptor has the whole of the day of maturity, that is, until twelve o'clock midnight, to pay. This means that he has not broken his promise to pay, is not in default, until the beginning of the day after the date of maturity, when the instrument is said to be overdue or dishonored. The exact moment a negotiable instrument becomes overdue is important not only because it marks the time when first an action can be brought against the maker or acceptor, but because it marks the time after which no one can become a holder in due course. (*See* Section 80, Chapter VII.) With respect to instruments payable at a stated future time, no difficulty can arise; but with respect to instruments payable on demand there is a difficulty. An instrument payable "on demand" or "at sight" is due immediately upon its delivery. When does it become overdue? Immediately? If it does there could scarcely be a holder in due course of a demand instrument. The rule is that a demand instrument becomes overdue after the elapsing of a reasonable time after its delivery. The Negotiable Instruments Law, § 53, says: "Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course."

"In determining what is a 'reasonable time' or an 'unreasonable time,' regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case." (*Neg. Inst. Law*, § 192.)

It is impossible to give any more definite rule for determining what is a reasonable time after which a demand instrument is overdue.

## OBLIGATIONS OF PARTIES—DRAWER AND INDORSERS

**Promise of drawer and indorser.**—Section 90. Just as the obligation of the acceptor of a bill and the maker of a note are identical, so the obligation assumed by the drawer of a bill and the obligation assumed by the indorser of either a bill or a note are identical. But the obligation of the maker or acceptor on the one hand is very different from the obligation of the drawer or indorser on the other. While the acceptor or maker is absolutely and unconditionally bound to pay the instrument at maturity without a presentment or demand of payment by the holder, the drawer, or indorser is only bound to pay the instrument *upon condition* that the instrument is duly presented to the acceptor or maker, is dishonored by him, and that certain steps, called proceedings upon dishonor, are taken by the holder.

§ 61 says:

"The drawer by drawing the instrument . . . engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder."

§ 66 says:

"Every *indorser* who indorses without qualification . . . engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder."

**Presentment for acceptance when necessary.**—Section 91. The first condition which the holder of a bill or note must perform in order to hold the drawer or indorser



is *presentment*, that is, presentation of the instrument to the acceptor or maker, accompanied by a demand for its payment. The presentment may be either at maturity for payment, or before maturity for acceptance. Obviously a promissory note cannot be presented for acceptance. But an unaccepted bill may be presented to the drawee with a request for his acceptance. In only a few cases is presentment for acceptance required by law; in most cases the holder may wait until maturity and present his bill for payment to the drawee. But since a drawee is not bound unless he accepts, it may well be that the holder will want the acceptance of the drawee to give credit to the instrument during the period it is to run. In such a case the holder may at any time present the bill to the drawee and request an acceptance. If the drawee complies with the request, the drawee becomes an acceptor and bound as such to pay the instrument at its maturity. If the drawee refuses to accept, then the bill is dishonored and the holder has a right (after taking the regular steps required in case of dishonor) to immediate payment from the drawer and indorsers of the bill. Of course, he has no remedy against the drawee who, as we have seen, is never bound unless he accepts. For example, if on February 1, 1911, I draw a bill of exchange on you payable February 1, 1912, in favor of X or his order, X need not present the instrument to you for acceptance at all, but may wait until its maturity on February 1, 1912, and present the instrument to you then for payment; but he may on February 2, 1911, present it for acceptance, in which event if you do not accept, he may (after due proceedings on dishonor) immediately sue me, the drawer, or the indorsers, and recover the amount of the bill though it is almost a year before the time of payment specified in the bill will arrive. You, the drawee, are under no liability on the instrument. The Negotiable Instruments Law, § 150, provides:

"When a bill is dishonored by nonacceptance an immediate right of recourse against the drawer and indorsers accrues to the holder and no presentment for payment is necessary."

Furthermore, if the holder sees fit to present an instrument for acceptance, and it is not accepted, then he is not permitted to wait and again present the instrument for payment at maturity, and then (after due proceedings upon dishonor) proceed against the drawer and indorsers, but he must immediately upon the nonacceptance take the due proceedings upon dishonor. If he does not do so, the drawer and indorsers are discharged from liability on the instrument. The Negotiable Instruments Law, § 149, provides: "When a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers." In other words, in the example given above, if X, the holder, sees fit to exercise the option the law gives him to present the bill for acceptance, he is bound in case you dishonor it by nonacceptance to take the proceedings upon dishonor at once, or I, the drawer, am discharged.

Up to this point we have been considering cases where the holder was not bound to present his bill for acceptance but might present it for payment to the drawee for the first time at maturity. There are, however, certain kinds of bills which are required to be presented for acceptance. The Negotiable Instruments Law, § 142, enumerates them as follows:

Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
2. Where the bill expressly stipulates that it shall be presented for acceptance; or
3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Examples of bills which must be presented for acceptance under subdivision 1 are as follows: "Please pay ten days after sight," etc.; "Please pay ten days after demand," etc.; "Please pay ten days after acceptance," etc. An example of a bill governed by subdivision 2 is the following: "Thirty days after date please pay," etc., with the added stipulation, "this bill must be presented for acceptance," or "Presentment for acceptance required," or "Acceptance required"; or perhaps the words, "With acceptance," would be sufficient to bring the instrument within subdivision 2. An example of a bill within subdivision 3 is one drawn on me, a resident of Madison, payable in New York.

Jan. 1, 1911.

Thirty days after date pay to X or order \$100 at the Han-  
over National Bank of New York City.

(Sgd.) J. JONES.

To W. U. MOORE,  
University of Wisconsin,  
Madison, Wis.

Now that we have determined what bills may be, and what bills must be, presented for acceptance, we must notice what bills may not be presented for acceptance. Bills payable "on demand," and bills payable "at sight" after the Negotiable Instruments Law (§ 7), which makes them payable on demand, are such, and since they are *payable*

as soon as presented, cannot be presented for acceptance. If they are not paid when presented they are dishonored and unless the holder at once takes the regular proceedings on dishonor the drawer and indorsers are discharged. If such bills are accepted in form, the drawee becomes, not the acceptor of a bill, but in effect the maker of a promissory note payable to the holder. The drawer and indorsers are discharged.

**Presentment for acceptance—day.**—Section 92. The next question is, when must a bill be presented for acceptance? In the case of bills payable at a stated time, which need not be presented for acceptance at all, presentment for acceptance may be made to the drawee any time before the instrument is overdue, that is, any time before or during the day of maturity. Since a bill payable at a stated future time must, whether accepted or not, be presented for payment at maturity, as we shall see, it would be absurd in most cases for the holder to present it for acceptance in the morning of the day of maturity and to present it for payment in the afternoon, but the holder may do so if he chooses.

The rule with respect to instruments which are required to be presented for acceptance is different. "The holder of a bill which is required . . . to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged." (Neg. Inst. Law, § 143.) What is a reasonable time within which to present for acceptance or to transfer cannot be defined. It is a question to be decided in each case as provided in § 192, Negotiable Instruments Law, in view of the business usage of the community. Bigelow ("Bills and Notes," pp. 113-115) discusses the question as follows:

"The Law Merchant requires presentment of such paper within a reasonable time; but that rule is interpreted to permit the circulation of such paper indefinitely before presentment, so that the Statute of Limitations does not run out. That is to say, the contract of the drawer and indorsers of a bill is that the holder may present the bill at any time within the period of the Statute of Limitations provided the paper is kept in circulation meantime; when finally presentment for acceptance is made, the taking of the other steps required in cases of dishonor will accordingly fix liability. For example, a sight bill is sent from Chicago to a distant territory on the day of its date. After some detention in the mails it reaches its destination, when the holder puts it into circulation at the first opportunity, and it is then kept in circulation as well as the thinly settled condition of the territory permitted. Without unnecessary delay it is presented to the drawee thirty-five days after its date. The presentment is good. Again: The defendant in London indorses to the plaintiff a bill of exchange drawn in London on A at Calcutta, payable to order sixty days after sight. The bill is dated March 5. On May 22 next the bill is sent to India and received there early in October; shortly afterward it is presented for acceptance, and acceptance is refused; due protest and due notice of dishonor follow. It is for the jury to say whether the bill was presented to the drawee in reasonable time, the fact that the paper was kept out in circulation for so long a time not being in itself unreasonable.

"The bill should, however, be kept in circulation, as far as circumstances reasonably permit, or it should be presented for acceptance; it should not be locked up. To lock it up, which means to hold it when it might reasonably be passed on in circulation or sent forward for presentment, would discharge the drawer and indorsers. What is a reasonable holding, and hence not a locking up, must de-

pend upon circumstances, as the examples above given show. In cases lying on the border, the question of reasonableness must ordinarily be left to the jury; in clear cases the Court will rule on the facts. The Court would rule that to keep a bill an entire day could not be unreasonable; it has been ruled that to hold an inland bill after sight in London until the fourth day after receiving it, within twenty miles of London, is not unreasonable.

"The rule, indeed, is not a hard and fast one. It may be entirely changed by custom; if there be clear and determinate usage of trade at the place of payment, which regulates the time of presentment, that usage is considered as entering into the contract of the drawer and indorsers, and presentment must be made accordingly."

**Presentment for acceptance—mode of making—when excused—summary.**—Section 93. The rules with respect to the mode or manner of making a presentment for acceptance are stated in §§ 144 and 145. Under what circumstances presentment for acceptance of instruments required to be so presented is excused, is stated in § 145.

The rules we have been discussing have been well summarized in Bigelow, Bills and Notes, pp. 80, 81, § 2:

"A bill of exchange payable at a stated time after date need not be presented for acceptance. However, according to the better doctrine of the Law Merchant, the drawer's contract, in the case of a bill of exchange, looks, in all cases in which the bill is not payable on demand, to an acceptance as well as to payment by the drawee. That is, the drawer is understood to engage in favor of the payee, or subsequent holder, that the drawee will give him at any time the special security of acceptance, which of course, in the case of paper payable after date or a stated time

after sight, may be long before the maturity of the bill, and thus be a matter of great importance.

"That undertaking of the drawer may be broken by the refusal of the drawee to accept the bill; there being then upon due notice (which the law requires), a breach of contract on the part of the drawer, he is in principle, and by the current of authority, liable on the bill at once, regardless of the fact that payment of the bill by the drawee may not be required by the order for a long time thereafter. For example: A draws a bill of exchange on B in favor of C, dated January 1, 1893, payable three months after date. On January 2, 1893, C presents the bill to B for acceptance, and acceptance is refused; the paper is duly protested, and A is duly notified. A is liable on the bill at once; C need not wait until the time stated in the bill before suing.

"The real meaning, then, of the drawer's contract, in the eye of the Law Merchant, is that the holder shall have the drawee's acceptance if he desires it, which being given, he shall then have payment by the drawee at the stated time; but that, if the drawee refuses acceptance (or payment), the sum shall be due at once from the drawer; though it must be remembered that it is part of the drawer's contract, in ordinary cases, that all steps necessary to liability in other cases shall be taken, whether on nonacceptance or nonpayment after acceptance. Indeed, though presentment for acceptance may be unnecessary, yet if asked for and refused the usual steps are required on pain of discharging the drawer, and not merely for the purpose of fixing his liability.

"All this, it must be understood, is applicable to paper payable . . . at a stated time after sight, as well as to paper payable at, or at a stated time after date, save that presentment for acceptance in the former case is necessary. And, as has already been intimated, if there happen to be an indorsement upon the paper, the indorser also may be

made liable and sued at once; for his contract, as well as that of the drawer, is broken. . . .

"The Statute deals with presentment for acceptance thus: Such presentment must be made (1) where the bill is payable after sight, or in any other case where presentment for acceptance is necessary to fix the maturity of the instrument; (2) where the bill expressly stipulates for such presentment; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary to make any party to the bill liable.

"Except as otherwise provided by the Statutes, the holder of a bill required as just stated to be presented for acceptance must present it for acceptance or negotiate it within reasonable time; failing which, the drawer and all the indorsers are discharged.

"Presentment for acceptance must be made at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or someone authorized to accept or refuse acceptance on his behalf. If addressed to two or more not partners, the bill must be presented for acceptance to all of them, unless one is authorized to act for the rest, when presentment to him alone will suffice. Where the drawee is dead, presentment may be made to his personal representative. If the drawee has been adjudged bankrupt or insolvent, or has made an assignment for creditors, presentment may be made to him or to his trustee or assignee.

"A bill may be presented for acceptance at any time when a negotiable instrument may be presented for payment. . . .

"A bill is dishonored by nonacceptance (1) when duly presented for acceptance, such acceptance as the Statute requires is refused or cannot be obtained; or (2) where



presentment for acceptance is excused and the bill is not accepted.

"If a bill duly presented for acceptance is not accepted within the time prescribed, the person presenting it must treat the bill as dishonored or lose his right of recourse against the drawer or indorsers. If the bill is dishonored by nonacceptance, immediate recourse may be had against the drawer and indorsers, and no presentment for payment is necessary."

**Presentment for payment—day.**—Section 94. Every bill of exchange and every promissory note must be presented for payment in order to make the drawee and indorsers liable. § 70 provides:

"Presentment for payment is not necessary in order to charge the person primarily liable on the instrument. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers."

**On what day must presentment for payment be made?**  
—Presentment for payment of a bill or note payable at a stated future time, as "on Feb. 1, 1912," or "one year after date," must be made on the day of maturity. (*See* Section 88, this Chapter.) There is an exception to this rule in case the day of maturity falls on Sunday or a holiday, in which event the presentment for payment may be made on the next succeeding business day. Negotiable Instrument Law, § 193, provides:

"Where the day, or last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done in the next succeeding secular or business day."

In case an instrument governed by § 142-1, payable "10 days after sight," "10 days after demand," or "10 days after acceptance," is accepted, it falls due and must be presented for payment on the tenth day after the day of its acceptance. Such an instrument presented for acceptance on January 1, would be payable on January 11, unless that day was a Sunday or holiday, when it would be payable the following day under the section just quoted. Such instruments as we are discussing are instruments which are required to be presented for acceptance and if acceptance is refused they are immediately dishonored and the proceedings upon dishonor must be taken immediately in order to hold the drawer or indorsers. This means, of course, that such instruments, if not accepted, can never be presented for payment. It is only necessary, then, to discuss as we have done when such instruments after they have been accepted must be presented for payment.

Instruments payable at a stated future time which are governed by §§ 144 and 145 present a difficulty. For example, suppose that on January 1, I deliver to X in Madison, Wis., the following bill of exchange drawn on J. Jones who resides and has his place of business in New York City.

Jan. 1, 1911.

Three days after date pay to X or order \$100 at the First National Bank of St. Paul, Minn.

W. U. MOORE.

To J. JONES,  
120 Broadway,  
New York City.

Such an instrument under subdivision 3 would have to be presented for acceptance to Jones in New York City. But how would it be possible to present the instrument in

New York for acceptance and get the instrument to St. Paul in time to present it for payment on January 4, the day of its maturity? Such a case is provided for in Negotiable Instruments Law, § 146.

“Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawer and indorsers.”

When must instruments payable on demand (or at sight) be presented for payment? We have seen that they are due and, therefore, may be presented on the day of issue or delivery; and that they are overdue after a reasonable time. But these rules do not supply an answer to the question. Negotiable Instruments Law, § 71, gives the following answer: If the instrument is a promissory note it must be presented within a reasonable time after its issue or delivery by the maker, or the indorsers will be discharged. If the instrument is a bill of exchange the presentment for payment will be in time if it is within a reasonable time after the last negotiation or transfer of bill, provided the instrument has been kept in circulation and not “locked up” during the time elapsing between its issue and the presentment. In a recent Wisconsin case (134 Wis. 218), the court thus construed § 71:

“From the foregoing it seems plain that as regards the payee of such an instrument as we have here, who puts the same in circulation with his unqualified indorsement thereon, and all subsequent parties thereto so indorsing the same, presentment for payment is sufficient, as regards

their liability, if made within a reasonable time after the last negotiation. A bill of exchange payable on demand, regardless of its character, put in circulation, as long as its circulating character is preserved may be outstanding without impairing the liability of indorsers thereof. Formerly the length of time within which a bill of exchange might circulate without impairing such liability was more or less uncertain, rendering it very difficult to determine any one case by the decision in another. That difficulty was removed, so far as practicable, by the provision that only the time need be considered intervening between the last negotiation and the presentment. That is recognized as a radical change in the law as it formerly existed. Selover, Negotiable Instruments Law, § 195, reads:

“ ‘As to an ordinary bill of exchange put in circulation, it was quite anciently held that the period between July 18th of one year and Jan. 16th of the next year was not necessarily unreasonable. *Gowan v. Jackson*, 20 Johns (N. Y.) 176. Perhaps one might now keep a bill of exchange for such length of time as to destroy its circulating character notwithstanding he ultimately passed it along to another person, but that situation, as we view the case, does not exist here.’ ”

Suppose an instrument payable at a fixed time, as ten days after date, is negotiated to X after it is due, that is more than ten days after its date. Obviously such an instrument cannot be presented for payment on the day of maturity. Has X no rights on the instrument? Yes, against the acceptor or maker, for no presentment at all is necessary to charge them. But has he no rights against the drawer and indorsers? No, not against the drawer and indorsers who indorsed before maturity. But has he no rights against the man who indorses to him after maturity?

Is that indorser discharged? If he is, why should he be? Can not a negotiable instrument be transferred after it is due? To be sure, a purchaser after maturity holds the instrument subject to the defenses which the maker has; but does it not continue transferable after maturity? And if it does, why should one who transfers it by indorsement after maturity escape from liability as indorser, because his transferee, the holder, could not in the nature of things present the instrument for payment at maturity? There is only one answer to these questions: One who indorses after maturity should be held as indorser provided the instrument is presented for payment. But when shall it be presented for payment? The rule is, it must be presented within a reasonable time after the indorsement. This is the rule of the Negotiable Instruments Law, § 7, subdivision 2, which provides:

“Where an instrument is issued, accepted, or indorsed, when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.”

It should be noticed that the section affects only the liability of parties who sign after maturity. The indorsers who indorsed before maturity are discharged once and for all if the instrument is not presented at maturity, or within a reasonable time, as the case may be. Further, the section applies to demand instruments. For example, if a demand note is not presented within a reasonable period after its issue (1) it is overdue, and (2) the indorsers are discharged. If, however, the note is indorsed after it is overdue, such indorser is liable if the instrument is presented within a reasonable time after his indorsement.

## CHAPTER IX

### OBLIGATIONS OF PARTIES—DRAWER AND INDORSERS

*(Continued)*

**Presentment for payment—place.**—Section 95. Negotiable Instruments Law, § 73, states the place where the presentment for payment must be made:

Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;
2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;
3. Where no place of payment is specified, and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

The section, although divided into four subdivisions, really provides for two cases: (1) where the place for presentment is designated on the face of the paper; (2) where it does not so appear.

If the maker or drawer in the body of the instrument, or the acceptor in his acceptance, especially provides where

the instrument is payable, as "payable at Commercial National Bank, Madison, Wis.," or "payable at 512 State St., Madison, Wis.," or simply "payable at Madison, Wis.," presentment for payment must be made at the place specified in order to charge the drawer and indorsers. The addition of an address to his signature by the maker of a note, or the acceptor of a bill or the affixing of an address to the drawee's name, has the same effect as expressly making the instrument payable at the address given. The instrument must be presented at that place. Where the place specified is a bank, office, or any other place of business, or a residence, no difficulty arises in applying the rule. But how shall presentment be made where the place named is a town or a city, as Madison, Wis., or New York City? In such a case the instrument must be presented either at the residence or at the place of business of the maker or acceptor in the city named if he has either there, and if the existence and location of either may be ascertained by the holder after diligent inquiry. If he has neither in the city named, or neither is ascertained after diligent inquiry, the presentment is sufficient if the holder or his agent is present with the instrument anywhere in the city named. The usual way of making presentment of this kind of instrument is to send it for collection to a bank doing business in the city or town designated as the place of payment. If the bank cannot ascertain the maker's or acceptor's place of business or residence, the mere presence of the instrument in the bank on the day of maturity is a sufficient presentment.

If a place of payment has not been specified in the instrument, in either of the modes described in the preceding paragraph, then the presentment must be made at the residence or place of business of the maker or acceptor, however remote and no matter how inconvenient the

making of the presentment may be. For example, a note made in Wisconsin by a traveler from Italy payable to a resident of Wisconsin, would, if no place of payment were specified in the instrument, be payable at the residence or place of business of the maker in Italy. This fact accounts for the practice of expressly making negotiable instruments payable at a particular place.

If an instrument on its face names no place of payment and the maker's or acceptor's place of business cannot be ascertained after diligent inquiry, then presentment must be made to the maker or acceptor personally wherever he can be found, or at his last known place of business or residence. If, however, he cannot be found after diligent inquiry, and no residence or place of business can be found where he has lived or transacted business, then presentment for payment is dispensed with and the drawer and indorsers are liable without presentment.

The statutory rules give no alternatives to the holder as to the place of making presentment. If a place of payment is specified in the instrument, a presentment to the maker or acceptor personally elsewhere, or at his actual place of business or residence at some other town, is of no avail. If no place is specified, but the maker or acceptor has a known place of business or residence, a personal presentment elsewhere is insufficient.

**Presentment for payment—hour.**—Section 96. Not only must presentment be made on the proper day and at the proper place, but it must be at a reasonable hour. Instruments payable at a bank must be presented during banking hours, that is, during the hours the bank is regularly open for the transaction of its business. There is an exception to this rule, where the maker or acceptor has no money



in the bank applicable to the payment of the instrument presented. In such a case the presentment will be sufficient if made at any time on the day of maturity, when admission may be gained to the bank and an officer or clerk is found present who is authorized to give an answer with respect to the payment of the bill. Negotiable Instruments Law § 75, states the rule and exception as follows:

"Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient."

When an instrument must be presented for payment at place of business, it must be presented during the customary hours of business in the community where the place of business is situated. Presentment either before or after these hours would be ineffectual even though the office were found open.

Instruments which must be presented at the maker's or acceptor's residence must be presented at a reasonable hour. But what is a reasonable hour? Bigelow ("Bills and Notes," pp. 121-123) says:

"It is common to say in cases of the kind that presentment may be made at any time of day between morning and night. But when does 'morning' begin, and when does 'night' end within the meaning of the statement? It would be unreasonable to say that presentment might be made at any time between the beginning of day and midnight, and the law does not say so.

"Payment should be called for only when, so far as

time of day is concerned, it can conveniently be made. Hence it should not be called for during the hours of rest; that is, the ordinary hours given to sleep, as, for instance, near midnight. For example: The defendant is indorser of a promissory note payable at no designated place. In the night of the day of maturity, between eleven and twelve o'clock, the holder calls up the maker, who has gone to bed, and presents the note for payment which is refused, and notice of dishonor given. The presentment is not good.

"The fact that the maker or acceptor may have retired to rest will not make the presentment improper, for he may have retired in the daytime, or in the edge of the evening, because of illness, fatigue, or anything else. The only question on this point is whether the presentment was made at a reasonable time of day, that question, in cases in which there is serious ground for doubt, will and should ordinarily be left to the jury. Still, the courts are inclined to push back the borders of doubt as far as they can, and so bring the case within the grounds of certainty. For example: The defendant is indorser of a promissory note, payable at no designated place, and due in August. The maker lives in the country, ten miles from Boston. The note is received at maturity by a notary public after the close of banking hours, from a bank in Boston which holds it for collection, the bank not knowing where the maker lives. After considerable inquiry, the maker's place of residence is ascertained, and the notary, informed of the place, goes as soon as he can to the house, arriving there about nine o'clock in the evening. The lights of the house are out, and the inmates have gone to bed for the night. The notary calls the maker up, and presents the note for payment, and payment is refused. The presentment is good; taking into consideration the distance of the maker from the holder, the inquiry made to ascertain the maker's

place of residence, and the season of the year, the time of presenting the note was reasonable. Again: Presentment is made between eight and nine o'clock at the house of a grocer. The house is shut, and no one is there to give answer. The presentment *may* be good.

"Similar narrowing of the borders of doubt has been made in regard to presentment in the early morning. Thus presentment upon a maker at his place of residence in a city at eight o'clock in the morning has been declared too early; while presentment so made in the country, at a farmer's house, would ordinarily, it seems, be reasonable."

**Presentment for payment by whom—to whom.**—Section 97. Presentment must be made by the holder or his agent. It is not necessary that the holder indorse the instrument to his agent even by a restrictive indorsement for collection. It is enough if he delivers the instrument to him with authority to present it for payment and to collect the sum due upon it. For example: When a note has been indorsed to a bank for collection, the actual presentment is really made either by a messenger employed by the bank or by a notary public.

Presentment to the acceptor or maker personally is never proper where a place of payment is named in the instrument. Nor is it proper even when no place of payment is specified. In such a case, presentment must be made at the residence or place of business of the maker or acceptor. In neither of the above cases is it necessary to find the maker or acceptor at the place where the presentment is made. "If he is absent or inaccessible," § 72, subdivision 4, of the Negotiable Instruments Law, says, the presentment may be "to any person found at the place where the presentment is made." It is only in case no place of pay-

ment is specified and no place of business or residence can be found after diligent inquiry that a personal presentment to the maker or acceptor is proper. Even then it is not necessary if he cannot with reasonable diligence be found.

In Negotiable Instruments Law, §§ 76, 77, and 78, several special cases are provided for. The sections are plain except that they appear to require or contemplate a personal presentment. That is not, however, their meaning. For example, § 76, providing that presentment must be made to the executor or administrator of the estate of the deceased maker or acceptor, does not mean that there must be a personal presentment to him, but that presentment must be made to him according to regular rules as if he were the maker or acceptor.

**Presentment for payment—manner of presenting.**—Section 98. The exhibition of the instrument to the proper person at the proper place, accompanied by a demand for its payment, constitutes normally the formal act of presentment. The demand, however, need not always be in express words. It is sufficient if the purpose of the presentment is clear to the person to whom it is made. Nor is an actual exhibition of the instrument necessary if the person to whom the presentment is made indicates by words or otherwise that such an exhibition is unnecessary or useless. But the person making presentment must have the instrument in his possession at the time, or the demand will be nugatory.

The presentment of paper made payable at a bank when the paper is deposited for collection in the same bank by the holder presents several peculiarities. The banking rooms are the place of presentment, and the bank is the person to make presentment. What must the officers of the

bank do in order to make a valid presentment? Must the cashier or note teller stand up and state aloud that he holds the note and presents it? Certainly not. The mere presence of the instrument in the bank to the knowledge of the bank is sufficient. If on the day of maturity up to the close of banking hours the maker or acceptor has no funds in the bank applicable to the payment of the instrument, it is dishonored. It probably is not even necessary for the bank officers to go through the formality of examining the account of the maker or acceptor, if they know without doing so that he has not sufficient money to his credit to pay the instrument. Of course, although this is another point, if the maker or acceptor has money deposited generally to his credit in the bank, it is the business and duty of the bank to apply it in payment of the instrument. The Negotiable Instruments Law in most states says:

“Where the instrument is made payable at a bank it is an equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.”

**Protest.**—Section 99. We have now completed our examination of presentment for acceptance and presentment for payment, the first steps or step which must be taken by the holder in order to fix the liability of the indorsers of a note and the drawer and indorsers of a bill. Later we shall take up when delay in making presentment is excused and when presentment is altogether dispensed with.

After presentment either for acceptance or for payment if the instrument is dishonored, the next step for the holder to take in order to hold the drawer and indorsers is, in the case of promissory notes and inland bills of exchange, the giving of notice of dishonor to the drawer and indorsers. But foreign bills of exchange not only must be presented

but must be *protested*, before notice is given the drawer and indorsers.

In taking up the subject of protesting foreign bills, a foreign bill must be distinguished from an inland bill. An inland bill is one which is both drawn and payable in the same state of the United States, or in the same country. A foreign bill is one which is drawn in one state of the United States and payable in another, or is drawn in one country, as the United States, and is payable in another, as England. Since a bill need not state on its face where it is drawn or where it is payable, in which event it is payable, as we have seen, at the residence or place of business of the acceptor, wherever that may be, it is obvious that it may be impossible from the face of an instrument to ascertain whether or not it is a foreign bill, and, therefore, requires protest. To relieve the holder from the necessity of determining at his peril whether a protest is necessary, it is provided that unless the instrument purports on its face to be drawn in one state or country and payable in another, it may be treated as an inland bill and not protested. (§§ 128, 151.)

May inland bills and promissory notes be protested? Yes; although not necessary, protest of notes and inland bills is permitted in most of the United States.

The protest of a negotiable instrument is the making of a public record by a notary public of the facts showing that the instrument has been dishonored. The protesting of an instrument may be divided into three constituent acts, each one of which must be performed by the same notary public: (1) the presentment for payment or acceptance and demand for payment or acceptance; (2) the

"noting" of the protest, and (3) the execution of the certificate of protest.

(1) With respect to the presentment by the notary, nothing need be said except that in making the presentment must be governed by all the rules we have found established with respect to the time, day, hour, place, etc., of presentment.

(2) "Noting" of the protest is nothing more than the making of a memorandum on the instrument of the essential facts which must later be incorporated into the certificate of protest.

(3) The execution of the certificate of protest strictly *the protest*, that is, the making of a public record of the facts showing the dishonor of the paper. The certificate of protest must be executed on the day the instrument is presented and dishonored, unless the protest is "noted" on that day. If there is a timely "noting," the certificate may be later prepared and executed. Negotiable Instruments Law, § 154, provides:

"When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as here provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting

The certificate of protest must comply with the following requirements of § 152:

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

- (1) The time and place of presentment;
- (2) The fact that presentment was made and the manner thereof;
- (3) The cause or reason for protesting the bill;
- (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

The following is a form of certificate of protest used by the Commercial National Bank of Madison, Wis.:

STATE OF WISCONSIN, } ss.:  
Dane County.

On the.....day of.....  
in the year of our Lord one thousand nine hundred and  
....., at the request of the Commercial National  
Bank, Madison, I .....  
Notary Public, duly admitted and sworn, dwelling in the City  
of Madison, and County of Dane, and State aforesaid, did  
present the original ....., which is  
hereto annexed .....  
.....  
and demanded ..... thereof which  
was refused.

WHEREUPON, I, the said Notary, did protest, and by these  
presents do publicly and solemnly protest, as well against the  
drawer and indorser of the said .....  
as against all others whom it doth concern, for Exchange, Re-  
Exchange, and all costs, charges, damages and interest already  
incurred and to be hereafter incurred for want of .....  
.....of the said .....

And I, the said Notary, do hereby certify that on the same  
day and year above written, notices of the foregoing Protest  
were delivered by me as follows:

Notice for.....  
" " .....  
" " .....



Notice for.....

And I do further certify that on the same day and year a  
written, notices of the foregoing Protest (a copy of which  
on the back hereof), were deposited in the post office (post  
of the same being paid), at Madison, as follows:

Notice for.....

" " .....

" " .....

" " .....

Each of the above-named places being the reputed place  
residence of the persons to whom these notices were directed.

IN WITNESS WHEREOF, I have hereunto set my hand, and  
fixed my Seal Notarial, the day and year above written.

.....

Notary Public

A certificate of protest of a foreign bill is presumptive  
evidence in the court of any state or country of the fact  
that the instrument has been duly presented and dishonored  
by the acceptor.

The certificate of protest of a foreign bill is, however,  
something more than evidence of dishonor. If there has  
been no protest, there can be no recovery against the drawer  
and indorsers. On the other hand, if the certificate is lacking,  
the fact of dishonor and protest may be proved by a  
available evidence. In the case of promissory notes and  
inland bills, protest, as we have seen, is not necessary, but  
because the certificate is, according to the statute, presumptive  
evidence of the facts stated in it, it is the banking  
custom to protest all negotiable paper which is dishonored.

**Notice of dishonor—form.**—Section 100. The next and  
last step to be taken by the holder after protest in the case  
of a foreign bill, and in the case of a promissory note or  
inland bill, after presentment and dishonor, is notice of  
dishonor.

The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. (Neg. Inst. Law, § 95.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice, unless the party to whom the notice is given is in fact misled thereby. (Neg. Inst. Law, § 94.)

A notice of dishonor, then, may be an unsigned communication in writing, or an oral communication, or a communication partly written and partly oral. The notice (1) ought to identify the dishonored instrument, and (2) must indicate that it has been dishonored by nonpayment.

The usual and proper mode of describing the dishonored instrument in a notice of dishonor is by giving its amount, its date, its date of maturity, and the names of all the parties to it. But, as the Negotiable Instruments Law says, a misdescription, and by implication an incomplete description, does not vitiate the notice, if the person receiving it knows that it relates to a bill or note upon which he is drawer or indorser. For this reason a notice which misstates the amount and does not state the names of the indorsers, has been held sufficient (*King v. Hurley*, 85 Me. 525), the court saying: "The defendant, however, does not show that he was in the least misled or confused by the omission, or by the mistake. On the contrary, it clearly appears that he understood the notice to refer to the note in suit. He was, therefore, fully informed of the dishonor of this note and that the holder looked to him for payment. This was sufficient to fix his liability."

An instrument is "dishonored by nonpayment" when it

is duly presented for payment and payment is refused cannot be obtained (Neg. Inst. Law, § 83). An indication of dishonor is, therefore, an indication (1) that a tender for payment has been made, and (2) that the instrument is unpaid. Both of these elements of a "dishonor by nonpayment" must appear from the notice "reasonable intendment," although they need not be expressly stated in it. Under this rule, a mere statement that the instrument is due and unpaid is insufficient. There may have been no presentment. Again, a statement that payment has been demanded is not enough. Due presentment is a presentation of the instrument to the maker or acceptor, as well as a demand. A notice stating directly that the instrument has been "dishonored" or "protested" is valid, because the reasonable intendment is that the proper steps to dishonor the paper have been taken.

The following is the usual form of notice:

STATE OF WISCONSIN, }  
           Dane County.    } ss.:  
   Madison, ..... 19  
       Please Take Notice, That a .....  
       for \$..... and .....  
       Dated .....  
       Payable .....  
       At .....  
       ..... by .....  
       On .....  
       Indorsed by .....  
       .....  
       Being this day due, presented and unpaid, and by me protested  
       for non ....., I hereby notify you that  
       holders look to you for payment, damages, interest and costs

it having been duly presented and ..... thereof demanded, which was refused.

Done at the request of The Commercial National Bank, Madison.

.....  
Notary Public.

To.....

(If notices other than your own are inclosed, for your own protection see that they are properly forwarded.)

It should be noted that the above notice assumes that the instrument has been protested. Since, however, protest is necessary only in the case of foreign bills, the notice need recite, in the case of promissory notes and inland bills, simply that the instrument has been presented and dishonored. The explanation of this feature of the printed form is the common practice referred to above of protesting all dishonored negotiable paper.

**Notice of dishonor—by whom given—to whom given.—**

Section 101. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

An illustration may make this clearer. X is the holder of a note indorsed successively by A, B, C, and D. Upon dishonor, X may give notice to all the indorsers, in which event each becomes responsible to X for the amount of the note; or he may give notice to D only. If he pursues the latter course, D's responsibility to X being fixed, D may, in order to protect himself, give notice to any or all of the three prior indorsers

Suppose D does send notice to B and C, what effect has

the serving of these notices on the rights of the holder. They have the same effect in fixing the liability of B and C as notices sent by him personally. The result is that each of these indorsers, B, C, and D, is responsible for the amount of the note to X; if D pays it he may look for reimbursement to either B or C but if B pays it, he has no recourse on A who has received notice from D. The Negotiable Instruments Law states the rule as follows:

“§ 92. Where notice is given by or on behalf of a party entitled to give notice, it inures to the benefit of the holder and all parties subsequent to the party to whom notice is given.”

If we suppose that the holder, X, instead of notifying only D, had also notified A, the notice would fix the liability of A not only to X but also to D. And to carry the case a step farther, had D notified B and C, the intermediate indorsers between him and A, the notice to A would operate for their benefit as well as for that of D. In other words, due notice from the holder to the first indorser fixes the liability to all subsequent indorsers who were themselves bound to the holder. The Negotiable Instruments Law states

“§ 91. Where notice is given by or on behalf of the holder, it inures to the benefit of . . . all prior parties who have a right of recourse against the party to whom notice is given.”

It is not necessary for the holder, or for a party entitled to give notice, to attend personally to the matter. He may, and usually does, act by an agent. A notice of dishonor sent by an agent is peculiar in that it need not be given in the name of his principal, but may be given in the agent's

own name, or in the name of any other party who is entitled to give notice. For example, X is the holder of a note indorsed successively by A, B, and C. X gives notice to the last indorser, C, who employs Y to notify A and B. A notice by Y in his own name, as holder, is sufficient, although he is not the holder. And a notice by Y, in the name of the holder X, who has not authorized him to act, is good. This is provided in the Negotiable Instruments Law.

“§ 90. Notice of dishonor may be given by an agent, either in his own name, or in the name of any party entitled to give notice, whether that party be his principal or not.”

**Notice of dishonor—time.**—Section 102. Notice of dishonor may be given as soon as the instrument is dishonored. If a bill or note is presented at ten o'clock in the morning of the day of maturity and payment is not obtained, the dishonor is complete and notice may at once be given. Or, if an indorser receive notice from the holder, he may at once notify the prior indorsers. But such expedition is not necessary. The time within which notice must be given is determined by certain definite rules which have been incorporated in the Negotiable Instruments Law.

“§ 102. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

“1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

“2. If given at his residence, it must be given before the usual hours of rest on the day following.

“3. If sent by mail, it must be deposited in the post office

in time to reach him in the usual course on the day following."

"§ 103. Where the person giving and the person receive notice reside in different places, the notice must be given within the following times:

"1. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or, if there be no mail at a convenient hour on that day, in time for the next mail thereafter.

"2. If given otherwise than through the post office, it must be given within the time that notice would have been received in the ordinary course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

"§ 93. Where the instrument has been dishonored by the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to the principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder."

An illustration of the operation of these rules will be found in the following example: Suppose that, although the time within which a notice of dishonor must be given or dispatched by mail is fixed, the time within which an indorser will receive notice may vary greatly with the circumstances. Y is the agent for collection of a bill for the holder, X. The bill is indorsed by A, B, C, D, and E, who indorsed successively in the order named. Upon dishonor, Y, the agent, may notify each of the five indorsers on behalf of the holder, X. If he pursue this course the notices if sent by mail must be deposited in the post office not later than the day following the

honor. A delay by him until the second day after dishonor (unless the circumstances bring the case within § 103 subd. 1) would discharge A, B, C, D, and E. Y, however, instead of notifying the indorsers, may dispatch a notice by mail to his principal, X. Upon its receipt, X may wait until the day following before mailing a notice to E, the fifth and last indorser. E, taking the full time allowed for giving notice, may notify the fourth indorser, D, who in turn notifies C, and so on. It is perfectly possible that several weeks or even longer may elapse before A, the first indorser, receives notice. Yet when he is notified, he is just as effectually bound as if a notice had been sent him directly by the holder or his agent.

**Notice of dishonor—place.**—Section 103. If the message constituting the notice, whether oral or in writing, whether delivered in person or by messenger, or sent through the mail, is actually received by the indorser within the time that would have been required for delivery had the notice been sent to the place designated by the law as the proper address to which the notice must be sent, the notice is sufficient. (Neg. Inst. Law, § 107-3, last sentence.) But, if the holder does not wish to assume the risk of the message being actually received within the proper time, the simple course, whatever the means of transmission may be, is to address it in accordance with the following rules laid down in the Negotiable Instruments Law:

“§ 109. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

“1. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or



"2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

"3. If he is sojourning in another place, notice may be sent to the place where he is sojourning. . . ."

If the indorser were a farmer, who, to suit his convenience, received his mail at the one of two neighboring offices more distant from his home, notice might properly be sent to either under Rule 1. Rule 2 would apply to the case of an indorser residing in a suburban town, whose place of business is in a large city. An example of Rule 3 is the case (*Chouteau v. Daniel Webster*, 6 Metcal Mass.) of a notice sent to Daniel Webster at Washington while he was there attending to his duties as a United States senator, although his legal residence and office were in Boston. It was held that the notice addressed to Washington, the place of his temporary residence or sojourn, was sufficient, the Court saying:

"The ground relied upon to show that such notice was not sufficient is that the defendant's general domicile and place of business were in the city of Boston, where he had at all times an agent who had the charge and management of his affairs. The defendant, though his domicile was in Boston, was actually resident at Washington, in discharge of his public duties as a senator, at a session of Congress called by public proclamation, and continued until after the time at which the notice was sent; so that the place where he might be presumed to be actually was fixed and well known by the nature of these duties. Under these circumstances, the courts are of the opinion that notice given to the defendant by mail, addressed to him at Washington, was good and sufficient notice of the dishonor of the notes. This decision is founded on the circumstances of the particular case, and may be varied by other facts.

is not like a case of a merchant stopping for a day or two at a hotel or watering place, or on a journey of business or pleasure."

**Notice of dishonor—to whom given.**—Section 104. Negotiable Instruments Law, §§ 97, 98 and 99, governs cases where the drawer or the indorser is dead, where a partnership has drawn or indorsed a bill or note, and where there are joint drawers or indorsers. They show to whom in such case notice of dishonor should be given.

**When presentment, protest, and notice dispensed with—when delay excused—waiver.**—Section 105. The following sections of the Negotiable Instruments Law state the circumstances under which presentment for acceptance, presentment for payment, notice of dishonor, and protest are dispensed with, or under which a delay in taking any one of those steps is excused:

Presentment for acceptance: § 147.

Presentment for payment: §§ 81, 82.

Notice of dishonor: §§ 109, 110, 111, 112.

Protest: § 158.

It will be impossible to give within the limits of this text a thorough discussion of these sections. The following summary view of their effect is quoted from Norton on Bills and Notes (3rd ed.), pp. 397-402:

"Presentment may be dispensed with when, after the exercise of reasonable diligence, it cannot be made; and notice of dishonor is dispensed with when, under the same circumstances, it cannot be given or does not reach the

parties sought to be charged. It is impossible to define accurately what constitutes reasonable diligence, or to do more than to enumerate some of the instances in which presentment and notice may be dispensed with under this general rule.

"War, disease, the suspension of commercial intercourse by superior force, such as the public and positive prohibition of commerce, occupation of a country by public enemies, and the like, exonerate the holder from presentment and notice. The interest of the public forbids such acts, and therefore the individual cannot be held responsible if he fail to perform them. Thus, the public policy forbids communication with districts infected by such plagues as the cholera or yellow fever, because public safety requires their quarantine. Hence even if the matter be not regulated by express statute, as it is in some states, the doctrine of the common law forbid all business intercourse with the inhabitants of such districts. But the other rule of the common law, that inability to perform the terms or conditions of a contract by reason of inevitable accident or casualty constitutes no excuse for nonperformance, does not apply to the presentment of negotiable instruments and notice of their dishonor, because questions of presentment and notice depend upon due diligence. The holder, if he has used due diligence in presenting the bill or note, and in notifying parties of its dishonor, has done all the law requires of him. Diligence on his part is measured by the general convenience of the commercial world, and the practicability of accomplishing the end required by ordinary skill, caution, and effort. And it only requires that demand and notice must be made and given within a reasonable time after the impediment is removed. This rule also does not apply to indorsers, unless the objection applies to them. For example, where a maker or acceptor is in a beleaguered town, and so inaccessible, it is merely the pre-

sentment to him which is excused. The indorser's liability should be at once fixed by sending him notice and if the indorser can be notified, notice to him is not excused, for the Law Merchant insists on compliance with its formalities as far as they can be observed.

"In cases of absence, death, or inability to discover the residence of the maker or acceptor, the question is one of diligence. When the maker of a note or acceptor of a bill has absconded, that will ordinarily excuse a demand, and notice of the fact is sufficient to hold all the indorsers. Where the maker or acceptor is a seaman on a voyage, having no domicile, the indorser is liable without a demand being made; and in every case where the maker or acceptor has no known place of residence, or place at which the note can be presented, the holder will in like manner be excused from making any demand whatever. The commonest instance of this last general statement is where the maker or acceptor removes from the state, and continues to reside abroad until its maturity. It is deemed in such cases a better business rule that the holder shall not be bound to seek out the maker or acceptor or his place of residence in the state to which he has removed for the purpose of presenting the instrument and demanding payment. It is probably also the law that he is not bound to present it at the last known place of business or residence of the maker or acceptor, though the cases are not explicit on this point. The most that is said is that a presentment will be sufficient if made at the last known place of residence or business; but it probably would not be enjoined upon the holder that it be done, because such a formality would be of no practical value. In case of death of the maker or acceptor, the general principle which we have stated above governs the case. If the instrument is made payable at a bank or other particular place, it must still be presented there. If its presentment be impossible, be-

cause of the death of the maker or acceptor, and no one can be found to whom to make presentment, its presentment will be excused. If a personal representative has been appointed, presentment and demand must be made to him. And if there is no personal representative, and at the time of his death the maker or acceptor had a known place of residence, presentment should be made at his former residence. In this case, as in all others, the death of the acceptor or maker never dispenses with notice to the drawer and indorsers of the fact of nonacceptance or of nonpayment.

*Waiver.*—The third class of cases mentioned in the original text is what is known as ‘Waiver.’ It may be of two kinds: (1) Expressed in words; or (2) implied from acts. When presentment of a note or bill at maturity or notice of its dishonor has been dispensed with by prior agreement, it would be a fraud upon the holder to permit him to suffer by acting upon the assurance of the party to whom he looks as security upon the paper. And it is fair that this should be enforced against the indorsers, for the conditions of presentment and demand are for his benefit alone. The commonest forms of express waiver are the words ‘presentation and protest waived,’ or ‘notice and protest of nonacceptance waived,’ or words similar in form and import, written or printed on the face of the bill, or over all or some of the indorsements, or else on a separate piece of paper. Where it is written on the face of the bill or note, it applies to all the parties. Where it is written on a separate piece of paper, the instrument is to be construed according to its terms. In extent, the waiver is construed to apply only to the acts which it specifies. Sometimes notice alone is waived; sometimes presentment, sometimes protest; in which case the term ‘protest’ is deemed to include all the formal facts which constitute dishonor. Any act, course of conduct, or language of the drawer or

indorser calculated to induce the holder not to make demand or protest or give notice, or to put him off his guard, or any agreement by the parties to that effect, will dispense with the necessity of taking these steps as against any party so dealing with the holder. The reason for this is that the conditions of demand and notice are for the benefit and protection of the drawer and indorser; and when his acts are such that the court cannot protect him without sanctioning a fraud or wrong, or when the drawer and indorser himself waives these proceedings, and consents to be bound without them, he is bound. A party to a contract may renounce the benefit of any stipulation in it designed for his own protection."

## CHAPTER X

### OBLIGATIONS OF PARTIES—DRAWER AND INDORSERS (Continued)

#### **Drawer and indorsers—order of liability to holder.**

Section 106. It has been said that the obligation of the drawer of a bill is substantially identical with the obligation of the indorsers of a bill or note. We have noted that the obligation of the drawer of a bill and of the indorser of a bill or note is conditional, upon due presentment, protest (in case of foreign bills), and notice of dishonor. In other words, the drawer and indorsers are not liable on the instrument to the holder unless he duly presents the bill and takes the steps prescribed by law for fixing their liability. Conversely, they are liable to him if he does make due presentment and takes the proper steps. But how are they liable? In the case of an inland bill, for example, upon which there are four indorsers, can the holder by duly presenting the instrument to the acceptor, and giving notice of dishonor to the drawer and each of the four indorsers, compel each of these five persons to pay him the full amount of the bill? Or, may he hold each for one-fifth only? The rule is that he may recover the full amount of the bill from any one of the five parties, but not from all. So soon as any one of the parties has paid the holder he is satisfied. Is there any one of the parties he must look to first for payment? Is there any one he must sue first? No; the holder has his choice and may seek payment of the bill from either the drawer or any of the indorsers regardless of the order in which they indorsed the paper

Let us suppose the bill was drawn by A, and indorsed, first, by the payee, B, second by C, third by D, and fourth by E to the holder. The holder may sue D first, and if D does not pay, the holder may next sue A, and if A does not pay the holder may sue E or B. In other words, the holder may look to the parties liable in any order he sees fit, but, of course, as soon as any one of them pays, he has no further remedy against the others.

**Drawer and indorsers—order of liability among themselves.**—Section 107. But suppose that D, in the case above, pays the holder the amount of the bill, what are D's rights? D may look for payment to all the parties prior to him, i.e., the acceptor, the drawer A, and the indorsers B and C, in any order he sees fit, but he has no rights against the indorser E, who is subsequent to him. The reason for this is that each party when accepting, drawing, or indorsing a negotiable instrument agrees that he will pay the person who is the holder when the instrument is signed by him and all *subsequent* holders of the instrument. In consequence, first, if D pay the holder, he resumes his former position as holder and each of the prior parties has agreed to pay him; second, D has no rights against E, because E, when he indorsed, agreed to pay his transferee and *subsequent* holders, and D is not a *subsequent* holder but has resumed his position as a holder prior to E. In fact, D has agreed to pay E, instead of E to pay D, and if D were allowed to recover from E, E would turn about and compel D to repay him. The matter may be summed up in this way: the holder may sue the acceptor, the drawer or indorsers in any order he sees fit, because they are all prior to him. Any indorser who has been compelled to pay the holder may look to any one of the parties prior to him in any order he sees fit, but he cannot look to subsequent parties. The result is, in the case supposed, when D pays



the holder, that if D compels C to pay, C may look to the acceptor, or to A or B; if D compels B to pay, B may look to the acceptor or to A; if D compels A to pay, A may look to the acceptor only; if D compels the acceptor to pay, the acceptor being ultimately liable, has no one to look to. Or, if D compelled B to pay, C would be discharged because B could look only to the acceptor or to A; if D compelled the acceptor to pay, A, B, and C would be discharged. The rule, then, is that, although the drawer and each of the indorsers are liable to the holder or to any indorser subsequent to them regardless of the order in which they signed the instrument, as among themselves, the drawer and indorsers are ultimately liable in the order in which they signed. The order of liability is as follows: first, the maker or acceptor who is always the party primarily and ultimately liable for the payment of the instrument; next, the drawer (in the case of a bill); and then the first indorser, the second indorser and so on in the order in which they indorsed. It should be noted that the order in which indorsers indorse means the order of time in which they became parties to the instrument, and not the order in which their signatures appear on the back of the instrument. For instance, though the payee might indorse at the bottom of the back of a note he would still be the first indorser.

Though the order in which the indorsers indorse is regularly the order of their ultimate liability, they may among themselves vary it by agreement. Suppose you wished to borrow money from a bank, but the bank would not make the loan unless you secured the signatures of two financially responsible citizens, X and Y. You secure the consent of X and Y and make a promissory note payable to X. X indorses it as first indorser and then Y indorses in blank and delivers the instrument to you for your use at the

bank. When X and Y indorsed they agreed between themselves that each should be liable for one half of the note in case you failed to pay. At maturity the note is duly presented to you and dishonored, and the bank gives due notice of dishonor to both X and Y. What are the rights of the bank? It has (1) an action against you as maker for the full amount; (2) an action against X as indorser for the full amount; and (3) an action against Y as indorser for the full amount. The bank may take its choice or sue all at once but it can recover once only the amount of the note. Let us suppose the bank sues X and recovers; has he any rights against Y the second indorser? He certainly would not have according to the ordinary rule because Y is an indorser subsequent to him; but according to the agreement between him and Y, he can recover half. Or suppose that the bank recovers from Y instead of from X, what are Y's rights? Can he recover the whole amount from his prior indorser X? No, because by the special agreement X was to be liable for one half only. Thus, although a special agreement between indorsers as to their liability is ineffectual so far as the holder's rights are concerned, it is effectual as between the indorsers who are parties to the agreement to vary the order and amount of their liability. The Negotiable Instruments Law, § 68, gives the rule as follows:

"As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally."

**Liability of irregular indorsers.**—Section 108. Indorsement, as we have seen, is the mode of transferring a negotiable instrument payable to order. An indorsement, how-

ever, results not only in transferring the instrument, but also in fixing on the indorser a conditional liability to pay it if the maker or acceptor does not, and the proper proceedings upon dishonor are taken by the holder. Even since an indorsement is primarily a mode of making transfer, it is clear that no one except the payee or subsequent holder of an instrument can properly indorse. But sometimes a person who is not the holder does write his name on the paper as if he were indorsing. What is the liability of such an "irregular indorser"? Before the Negotiable Instruments Law several views were taken by the courts. The Negotiable Instruments Law, § 63, provides that he shall be liable as *indorser*:

"A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity

Thus, if the payee of a note offers it for sale to a bank but the bank refuses to buy, doubting the ability of the maker and indorser to pay, the payee may induce X, a third person, to indorse his name on the paper for the purpose of giving it credit at the bank. X is an irregular indorser, and, under the Negotiable Instruments Law, assumes the same obligation to the bank and subsequent holders as a regular indorser. The Negotiable Instruments Law, § 64 (subd. 3), expressly provides: "If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee." His rights, also, upon being compelled to pay, are the same as those of an ordinary indorser, i.e., he may obtain reimbursement by an action on the note against the maker or the prior indorsers, including the payee for whose accommodation he signed. It makes no difference whether X or the payee signed first, or if

what order their names appear on the back of the paper. The payee is always, as we have seen, the first indorser and liable as such.

In the case just discussed the irregular indorsement was placed on the note, after the instrument had been delivered to the payee and had had its inception as a negotiable instrument. Suppose, however, the indorsement had been made before the maker had delivered the note. The Negotiable Instruments Law, § 64 (subd. 1 and 2), defines the liability of such an irregular indorser as follows:

"Where a person not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

"1. If the instrument is a note or bill, payable to the order of a third person or an accepted bill, payable to the order of the drawer, he is liable to the payee and to all subsequent parties.

"2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer."

These rules are made clearer by examples. An illustration of the operation of Rule 1 is a case where A makes a note payable to the order of B, his creditor, and offers the note in payment of the debt. B refusing to receive the note, A induces X to indorse his name upon the note in order to give it credit with B, who, relying on the indorsement of X, takes the note in payment of A's debt. The manifest intention of the parties is that X shall be liable to B and holders subsequent to B. This intention is effectuated by Rule 1. An example of Rule 2 is a case where A, the drawer of a bill drawn payable to his own order, secures X's indorsement before he delivers it to

B. Here again X's intention appears to be to bind him to B and subsequent holders. Rule 2 fixes X's liability in accordance with this intention. The peculiarity in one of these cases is that, as a formal matter, B is the payee and therefore the first indorser, and, were it not for the anomalous character of X's indorsement, would be liable to X who is subsequent to him.

**Indorser of bearer instrument.**—Section 109. Of course it is not necessary to indorse an instrument payable to bearer in order to transfer it. But the holder of such an instrument may do so. If he does, he "incurs all the liabilities of an indorser." (Neg. Inst. Law, § 67.)

#### WARRANTIES OF AN INDORSER OR TRANSFEROR

**Warranties.**—Section 110. Every transferor of a bearer instrument, and every blank and special and qualified indorser of an order instrument, who transfers for value, impliedly warrants (quite apart from his contract as indorser, if he is an indorser), like any seller of property, that the article which he sells is what it purports to be. The Negotiable Instruments Law provides:

"§ 65. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

"1. That the instrument is genuine, and in all respects what it purports to be.

"2. That he has good title to it.

"3. That all prior parties had capacity to contract.

"4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

"But when the negotiation is by delivery only, the warranties are limited to the genuineness of the instrument and the transferor's good title to it."

ranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes."

"§ 66. Every indorser who indorses without qualification, warrants to all subsequent holders in due course: 1. The matters and things mentioned in subdivisions one, two, and three of the next preceding section."

(1) The warranty that "the instrument is genuine and in all respects what it purports to be." Under this warranty the indorser or transferor is liable if for any reasons the paper never had an inception as a negotiable instrument, as, for example, where it was forged, or void by statute, or where it was incomplete when it passed out of the maker's, drawer's or acceptor's hands and he never intended it to take effect as a negotiable instrument. In *Hannum v. Richardson* (48 Vt. 508), the defendant sold and indorsed "without recourse" to the plaintiff a piece of paper which purported to contain a promissory note. In fact the obligation was absolutely void by a statute of the state. It did not appear that the defendant acted in bad faith or knew of the illegality. It was held that the defendant was nevertheless liable on his warranty. The court said:

"By indorsing the note 'without recourse' the defendant refused to assume the responsibility and liability which the law attaches to an unqualified indorsement, so that, in respect to such liability, it may perhaps be regarded as standing without an indorsement. If it be so regarded, then in what position do these parties stand in respect to the transaction? The principle is well settled that where per-

sonal property of any kind is sold, there is on the part of the seller an implied warranty that he has title to the property, and that it is what it purports to be, and is that for which it was sold, as understood by the parties at the time; and, in such case, knowledge on the part of the seller is not necessary to his liability. The implied warranty is in this respect like an express warranty: the scienter need not be alleged or approved. . . . In this case the note in question was given for intoxicating liquor sold in this state in violation of law, and therefore was void at its inception; in short, it was not a note, it was not what it purported to be, or what it was sold and purchased for; it is of no more effect than if it had been a blank piece of paper for which the plaintiff had paid his fifty dollars. In this view of the case, we think the defendant is liable upon a warranty that the thing sold was a valid note of hand."

(2) Warranty that the transferor or indorser has a good title. Under this warranty one who transfers by delivery an instrument on which any of the indorsements necessary to pass title are forged, is liable even though he knows nothing of the forgery. For example, A is the payee of an instrument payable to order. The instrument is stolen from him and his indorsement in blank is forged by the thief who sells the paper to B. B without knowledge of the forgery and without indorsement sells to C, an innocent purchaser. C may recover from B, although he did not indorse because B had no title and consequently could convey none to C.

(3) Warranty that all prior parties had capacity to contract; if the maker, drawer, acceptor or any prior indorser, is an infant or an insane person, or any person who does not bind himself by his signature to negotiable paper, then any person who buys the paper supposing that their signa-

tures do represent the obligations which on the face of the paper they purpose to be, may recover against his transferor or indorser on this implied warranty.

(4) Warranty that he has no knowledge of any fact which would impair the validity of the paper or render it valueless. The insolvency of the acceptor or maker at the time of the transfer, or at any other time, does not charge the transferor on any of his warranties. To be sure, if it results in the inability of the maker or acceptor to pay at maturity, the transferor, if he has indorsed, may be held as indorser. But the transferor, when he sells an instrument which, although legally valid, is of no practical value because of the insolvency of the parties to it or other reason, does warrant that he has no knowledge of any fact which renders it valueless. For example, the plaintiff sold the defendant a check drawn and indorsed, to the plaintiff's knowledge, by an insolvent person. The defendant gave plaintiff a note for the purchase price. In an action on the note, the defendant relied for a defense on plaintiff's breach of warranty. It was held the defense was good. "Where a party negotiates commercial paper," said the Court, "payable to bearer, or under the blank indorsement of another person, he cannot be sued on the paper, because he is not a party to it; but he nevertheless warrants that he has no knowledge of any facts which prove the paper to be worthless, on account of the failure of the makers, or by its being already paid, or otherwise to have become void or defunct; for, says Judge Story, 'any concealment of this nature would be a manifest fraud.'"

#### ADMISSIONS OF MAKER, ACCEPTOR, AND DRAWER

**Admissions.**—Section III. We have studied the tracts of the maker, acceptor and drawer and know



they respectively have promised to do by signing a negotiable instrument. Before we leave these parties, however, there are several matters to be noticed. As an incident of their becoming parties to a negotiable instrument, and quite apart from the direct contract liability thereby assumed by them, the maker, acceptor, and drawer impliedly represent certain facts to be true. The representations thus made may not be denied; the party making the representation is said to have admitted the fact represented and is not permitted to prove that his representations or admissions are not true. Thus, the maker by making a note, and naming a payee therein, represents that the payee named is an existing person and capable in law of transferring the note. The same representation or admission as to the payee is made by the drawer of a bill, or by the acceptor in accepting a bill. In consequence he is not allowed to prove that there was no such existing person as the payee named, or that the payee was an infant or insane person or any other circumstances which show that the payee has no capacity to transfer the paper by indorsement. For example, if I made a note payable to an insane person and he while still insane indorsed it to you for value, in an action by you against me as maker I could not show as a defense that the payee was insane and therefore incapable of making a valid indorsement to you. The Negotiable Instruments Law provides:

“§ 60. The maker of a negotiable instrument by making it . . . admits the existence of the payee and his then capacity to indorse.”

“§ 61. The drawer by drawing the instrument admits the existence of the payee and his capacity to indorse.”

“§ 62. The acceptor by accepting the instrument . . .

admits . . . the existence of the payee and his then capacity to indorse."

In addition to the admission of the existence and capacity of the payee which the acceptor makes in common with the drawer and the maker, he further admits "the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the interest." (Neg. Inst. Law, § 62-1.)

(1) Acceptor's admission of the existence, capacity, and authority of the drawer. Example: An infant who is unknown to you and to whom you owe nothing draws a bill of exchange on you payable to me and delivers it to me in payment of debt. Upon presentment for acceptance you accept the instrument. You have no defense against me. By acceptance you admitted the capacity and authority of the drawer.

(2) Acceptor's admission of the drawer's signature. A drawee by accepting admits the signature to the bill to be the genuine signature of the drawer and not a forgery. But he does not admit that the body of the bill has not been altered between the time of drawing and accepting. Thus, if A forges B's signature as drawer to a bill drawn on C, inserting his own as payee, and negotiates the instrument to D, who pays value in good faith, and C accepts the bill in ignorance of the forgery, D may recover from C on his acceptance. But had B drawn a genuine bill on C payable to A, and had A altered it by raising the amount, in such a case C's subsequent acceptance would not bind him, and D, the innocent purchaser, could not recover against him on his acceptance. In other words, the acceptor admits the genuineness of the signature but not the genuineness of the body of the bill. A striking illustration of this rule is the

case of the *National Park Bank v. National Bank*. A bill was drawn by the Ridgely Bank of Illinois on the National Park Bank, payable to one Shirly. The draft was stolen, the name of the payee changed, the amount raised from \$14.20 to \$6,300, and the signature of the drawer erased and then rewritten as before. The instrument was then negotiated to the Ninth National Bank, which paid value for it in good faith. Thereafter, it was accepted by the Park Bank. It was conceded that the Park Bank would not have been bound by its acceptance if the only alteration had been as to the payee and amount, for its acceptance admitted the genuineness of the drawer's signature only. But the drawer's signature was not genuine. It had been erased and rewritten. In consequence, the Court held the Park Bank bound to pay; for the bill had not been altered since the signature, which its acceptance admitted to be genuine, had been attached to the instrument. The Court said: "For more than a century it has been held and decided, without question, that it is incumbent upon the drawee of a bill to be satisfied that the signature of the drawer is genuine, that he is presumed to know the handwriting of his correspondent, and, if he accepts or pays a bill to which the drawer's name has been forged, he is bound by the act, and can neither repudiate the acceptance nor recover the money paid."

Not only does the admission of the acceptor not extend to the face of the instrument, but it does not extend to the genuineness of the indorsements. The drawee of a bill payable to order is bound by his acceptance to pay the payee or his order, but no one else. If the payee's indorsement is forged, the instrument is not transferred and the payee is not deprived thereby of his right to receive payment. It makes no difference in the application of this rule that the drawee accepted the instrument after the

forgery of the payee's indorsement, and that the holder purchased innocently after the drawee had placed his acceptance on the bill. The acceptor does not admit the genuineness of the indorsements. He promises to pay the legal holder of the bill at maturity.

## CHECKS

**Checks—certification.**—Section 112. A check is a bill of exchange drawn on a *bank* and payable *on demand*. (Neg. Inst. Law, § 184.) If this were all it would not be necessary to say anything further about checks. We could apply to them the rules we found applicable to bills of exchange payable on demand. But there are several peculiarities of checks. In the first place, like a bill payable on demand, a check cannot be accepted. But custom and the Negotiable Instruments Law (§ 186) have recognized what is called the certification of a check. Certification has the effect of acceptance in this: by certifying a check the drawee bank becomes liable to the holder. But it discharges the drawer and the indorsers prior to the holder at whose request the bank makes the certification. However, if the drawer himself, before he delivers the check to the payee, secures the certification, he remains liable as drawer notwithstanding. And all indorsers who indorse after the certification are liable as such.

**Checks—presentment.**—Section 113. In the next place, unlike a bill payable on demand, a check need not be presented for payment within a reasonable time in order to hold the *drawer*, although it must be in order to hold the *indorsers*. But if *loss* falls upon the drawer by reason of the failure of the holder to present within a reasonable time, then the drawer is discharged to the extent of his loss. Thus, if a holder delays presentment beyond a rea-

reasonable time and in the meantime the drawee bank fails, paying 25% to its depositors, the drawer is discharged to the extent of 75% of the face of the check. What is a reasonable time within which to present a check within this rule is a question to which usage has given a more definite answer than in the case of other kinds of bills. In *Grange v. Reigh* (99 Wis. 552), for example, it appeared that the defendants, after banking hours on July 20, drew and delivered to plaintiff in Milwaukee, where plaintiff resided, a check for \$1,211 upon the South Side Savings Bank, located in Milwaukee. The check was not presented on July 21, during all of which day the bank was open and would have paid the check had it been presented. The bank failed and did not open after July 21, by reason of which the check was not paid. In holding that the loss by reason of the bank's failure must fall upon the plaintiff, the court said: "The settled law applicable to the facts of this case is that, if a person receives a check on a bank, he must present it for payment within a reasonable time, in order to preserve the right of recourse on the drawer in case of nonpayment by the drawee; and that, when such person resides and receives the check at the same place where such bank is located, a reasonable time for such presentation reaches, at the latest, only to the close of banking hours on the succeeding day, excluding Sundays and holidays. Plaintiff failed to comply with the law in this respect; hence defendants were discharged from all liability to answer for the fault of the bank."

With respect to indorsers also a check must be presented more promptly than other bills. When the parties all reside in the same place, the holder should present the check on the day it is received or on the following day, and when payable at a different place from that in which it is nego-

tiated, the check should be forwarded by mail on the same or the next succeeding day for presentment.

## DISCHARGE

**Discharge in general.**—Section 114. When a negotiable instrument becomes due it ought to be paid, and if it is not it is discredited. However, the maker or acceptor remains liable and so also the drawer and indorsers, provided there have been due presentment and regular proceedings on dishonor. The holder of the instrument at maturity, in the event that neither the acceptor, maker, drawer, or indorsers pay the amount due upon it, is not obliged to bring an action on the instrument. The bill or note, although dishonored, continues transferable. A transferee, although he cannot be a holder in due course, does obtain the same rights as his transferor had, that is, he takes the instrument subject to the defenses against it, if any. Thus, a negotiable instrument after maturity ceases to be a mercantile substitute for money, but the obligations of the parties to it continue unaffected. How, then, are these obligations discharged? Before answering we must distinguish between an act which discharges the instrument, viz., the obligations of all the parties on the instrument, and an act which discharges one or some only of all the parties. First, as to acts which discharge the instrument, of which the principal are: (1) Payment; (2) Cancellation; (3) Alteration; and (4) Renunciation.

**Payment.**—Section 115. Payment to operate as a discharge of an instrument must be made (a) by the maker or acceptor; (b) at or after maturity; (c) to the holder or his agent.

Payment by the drawer or one of the indorsers does not

discharge the instrument. To have such effect the payment must be by the party primarily liable, i. e., the maker or acceptor. The effect of such a payment will be considered below. The payment must be by the maker or acceptor at or after maturity. For example, the acceptor of a bill payable on June 1, 1911, pays it to the holder on May 1, 1911, receives the instrument from the holder, and then negotiates it before maturity to X, an innocent holder for value. X may recover on the bill against both the acceptor himself, the drawer, and the indorsers. Of course, however, if X had purchased the bill from the acceptor after its maturity on June 1, 1911, X could not recover against the drawer and indorsers. The possession of the paid bill by the acceptor on the day of maturity would be equivalent to a payment by him on that day. Again, suppose in the above case that the holder had not surrendered the paper to the acceptor upon payment, and had subsequently transferred it to X, an innocent purchaser, before maturity. X could recover from the acceptor and the other parties, who would thus be compelled to pay the bill a second time. The payment was not at or after maturity. Of course, the holder could not have recovered a second time from the acceptor, and had X bought after maturity he would have held subject to the defense that the bill had been once paid. "Payment means payment in due course, and not by anticipation. Had the bill been due before it came into the plaintiff's hands, he must have taken it with all its infirmities. In that case, it would have been his business to inquire minutely into its origin and history. But, receiving it before it was due, there was nothing to awaken his suspicion. I agree that a bill paid at maturity cannot be reissued, and that no action can afterward be maintained upon it by a subsequent indorsee. A payment before it becomes due, however, I think does not extinguish it any

more than if it were merely discounted." (Burbridge v. Manners, 3 Camp. 193.)

The payment must be made not only by the acceptor or maker at or after maturity, but to the holder or his agent. Thus, payment made by an acceptor or maker to a person in possession of an instrument under a forged indorsement does not discharge the instrument, but the holder from whom the instrument has been stolen and whose indorsement has been forged can recover upon the instrument from the maker or acceptor and any other parties to the paper. Thus, if you are the holder to whom a note has been specially indorsed, and a thief steals it from you, and after forging your indorsement, sells it to X, an innocent purchaser, payment to X will not deprive you of your rights against the maker and indorsers. Of course, if the instrument were payable to bearer, any person in possession of the instrument would be the holder, and a payment to him would discharge the paper and extinguish your rights against all the parties.

**Cancellation.**—Section 116. If the holder, with the intention of extinguishing the instrument, cancels it by drawing lines through it, or by erasing the writing or signature of the maker or acceptor, or by tearing or mutilating the paper, all the parties are discharged. Negotiable Instruments Law, § 122, provides:

"A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority."

**Alteration.**—Section 117. An alteration is any material



change in the terms of the instrument. Unlike a cancellation, it discharges the paper and all the parties on it, even though it is made by a stranger and against the will of the holder. It is provided, however, that if an instrument is negotiated after alteration to a holder in due course, who knows nothing of the alteration, he may recover on the instrument according to its terms before alteration. Negotiable Instruments Law, § 123, enacts:

"Where a negotiable instrument is fraudulently or materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented, orally or in writing, to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor."

For example: The thief of a bearer instrument raises it from \$1,000.00 to \$10,000.00, and sells it to a holder in due course. The holder in due course can recover \$1,000.00 on the paper.

Negotiable Instruments Law, § 124, specifies as follows the alterations which are material:

"Any alteration which changes:

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relation of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which

alters the effect of the instrument in any respect, is a material alteration."

**Renunciation.**—Section 118. "An absolute and unconditional renunciation of his (the holder's) rights against the principal debtor (maker or acceptor) made at or after the maturity of the instrument, discharges the instrument," and the liabilities of all parties thereon. "A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable (maker or acceptor) thereon." (Neg. Inst. Law, § 121.) Since such a renunciation may be made only *at or after maturity*, an innocent purchaser, even though he bought without notice, would get no rights because he would not be a holder in due course.

**Discharge of drawer and indorsers.**—Section 119. The drawer or an indorser of a negotiable instrument, unlike the maker or acceptor, may be discharged without the instrument itself being discharged. The discharge of such a party is effected in several ways of which the following are the more important: (1) Payment by him; (2) Cancellation of his signature by the holder; (3) Renunciation; and (4) Discharge of a prior party.

**Payment by drawer or indorser.**—Section 120. Payment of a negotiable instrument to the holder by the drawer or an indorser discharges the liability of the person making the payment, but does not discharge the maker or acceptor or the indorsers prior to the person making the payment. Upon his payment he is entitled to receive the instrument from the holder, and to enforce it against the prior parties, or, if he wishes, to transfer it by way of sale or gift. The Negotiable Instruments Law provides:

"§ 120. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party

so paying it is remitted to his former rights as regards all prior parties; and he may strike out his own and all subsequent indorsements, and again negotiate the instrument."

For example, C sells property worth \$100 to B, taking in payment a note of \$100 made by A payable to B, indorsed by B to C. C indorses the note to D. A does not pay at maturity, and C is compelled to pay D. C can enforce the instrument against A or B. The instrument is not discharged, because the absolute and unconditional promise of the acceptor or maker to pay has not been fulfilled by the indorser's payment in satisfaction of his own obligation to pay if the maker or acceptor does not. The prior indorsers are not discharged, because they have assumed an obligation to every subsequent holder to pay if the maker did not, and he has not paid. The indorser who has paid and received the instrument is entitled to enforce it against the prior parties, or to transfer it, because he has become the holder. The indorser who had taken up the instrument cannot enforce it against indorsers subsequent to himself. In the example above, had the holder D secured payment from the first indorser B, instead of from the second C, B would have no rights against C. To allow B to pursue C on the instrument would be futile; for were C compelled to pay, he could turn about, and, as we have seen, under the general rule that prior indorsers are not discharged, compel B to repay him.

**Cancellation of drawer's or indorser's signature.**—Section 121. If the holder cancels the drawer's or indorser's signature with the intention of discharging the person whose signature he strikes out, that person is discharged, but the maker or acceptor and the indorsers prior to the indorser whose signature was canceled continue liable on the paper.

**Renunciation.**—Section 122. Instead of renouncing his rights against the maker or acceptor and thus discharging the instrument and the liabilities of all the parties to it, the holder may renounce his rights against the drawer or any indorser. The renunciation must be in writing or the instrument must be delivered up to the party against whom the holder has renounced his rights. The renunciation may be either before, at, or after maturity. Of course, if it is made before maturity, the renunciation will not affect the rights of a holder in due course. (Neg. Inst. Law § 121.)

**Discharge of prior party.**—Section 123. We have noticed many times that any act which discharges the liability of the maker of a note or the acceptor of a bill, discharges all of the other parties. This is because any indorser upon paying the instrument to the holder is entitled to reimburse himself from the maker or acceptor. If the holder by his acts discharges the maker or acceptor, thus destroying the indorser's right to recover from the maker or acceptor, it would be unjust to allow the holder to compel the indorser to pay. The same reasoning applies to the discharge of the drawer or prior indorsers by the holder. For example: E is the holder of a note of which the maker is A, the payee and first indorser B, the second indorser C, and the third D. If E compelled D to pay, D might look for reimbursement to A, B, or C. If E discharged A by canceling his signature before he sued D, it would be unjust to let E recover from D. For the same reason it would be unjust to let him recover from B or C. E has destroyed their right to look to the maker A for the ultimate payment of the instrument. Again: if E discharged C by canceling his signature, this would destroy E's rights against D, who is subsequent to C, but would not destroy his rights against A or B, because they are prior to C, and under no circum-

stances could they look to C for reimbursement in case they were compelled to pay the holder.

The consequence is that there is a general rule that any act of the holder which discharges a prior party, discharges all subsequent parties. The Negotiable Instruments Law, § 119, specifies the cases in which a drawer or indorser is discharged. All the cases mentioned are the results of the application of the general rule just stated, except subdivisions 3 and 5. These subdivisions, especially 5, state important rules which should be remembered. A valid agreement to extend the time of payment made between the maker or acceptor and the holder, or between a prior indorser and the holder, discharges all subsequent indorsers.

## APPENDIX I

### UNIFORM NEGOTIABLE INSTRUMENTS LAW

Note: The draft following is the uniform law as found in the statutes of Illinois, and is typical of the act as found in most of the forty-three states that have adopted it. In some states, notably Wisconsin, the original draft of the Negotiable Instruments Law has been adopted with amendments made in order to codify some case law on negotiable instruments obtaining in the particular state at the time of enactment but which was inconsistent with the original draft. These changes in some cases have been very minor and in others very basic, but the accumulation of revisions is not sufficient to change the force of the act as a whole. The text of the Wisconsin act is also included in this appendix as an example of some of the typical modifications from the original draft of the Uniform Negotiable Instruments Law.



Laws of Illinois Relating to Negotiable Instruments In Force July 1, 1913. Published by Lewis G. Stevenson, Secretary of State.

## NEGOTIABLE INSTRUMENTS

### ACT OF 1874 WITH ADDITIONS AND AMENDMENTS

[REVISED STATUTES, CHAPTER 98, PARAGRAPHS 3-18]

- |                                 |                                |
|---------------------------------|--------------------------------|
| § 1. Repealed.                  | § 7d. Proceeding when all the  |
| § 2. Repealed.                  | defendants have not            |
| § 3. Effect of notes, etc.      | been served.                   |
| § 4. Notes, etc., assignable by | § 8. Repealed.                 |
| indorsement.                    | § 9. Failure of consideration. |
| § 5. Suit by assignee.          | § 10. Fraud.                   |
| § 6. Payment after notice of    | § 11. Defense.                 |
| assignment.                     | § 12. Set-off.                 |
| § 7. Rights of holders—liabil-  | § 13. Payment before assign-   |
| ity of assignor.                | ment.                          |
| § 7a. All persons liable may be | § 14. Lost instruments.        |
| sued in one action.             | § 15. Days of grace.           |
| § 7b. How judgment shall be     | § 16. Time.                    |
| entered.                        | § 17. Holidays.                |
| § 7c. When drawer or endor-     | § 18. Check, etc., for labor   |
| ser pays judgment—              | payable in bankable            |
| proceedings as to oth-          | currency—penalty.              |
| ers.                            |                                |

AN ACT to revise the law in relation to promissory notes, bonds, due bills and other instruments in writing. [Approved March 18, 1874.]

\* 1. REPEALED. Sec. 196, Act of 1907.

\* The first number preceding each section is the paragraph number of Chap. 98, Rev. Stat.



2. REPEALED. Sec. 196, Act of 1907.

3. § 3. All promissory notes, bonds, due bills and other instruments in writing, made or to be made, by any person, body politic or corporate, whereby such person promises or agrees to pay any sum of money or articles of personal property, or any sum of money in personal property, or acknowledges any sum of money or article of personal property to be due to any other person, shall be taken to be due and payable, and the sum of money or article of personal property therein mentioned shall, by virtue thereof, be due and payable as therein expressed. [R. S. 1845, p. 384, § 3. *Easter et al. v. Boyd*, 79 Ill., 325; *White v. Smith*, 77 Ill., 351; *Wickencamp v. Wickencamp*, 77 Ill., 92; *Tooke et ux. v. Newman et al.*, 75 Ill., 215; *First Nat'l Bank of Centralia v. Strang et al.*, 72 Ill., 559; *King v. Fleming*, 72 Ill., 21; *Melvin et al. v. Hodges*, 71 Ill., 422; *Hollida v. Hunt*, 70 Ill., 109; *Blanchard v. Williamson*, 70 Ill., 647; *Seibel v. Vaughn*, 69 Ill., 257; *Massie v. Belford*, 68 Ill., 290.

4. § 4. Any such note, bond, bill, or other instrument in writing, made payable to any person named as payee therein, shall be assignable, by indorsement thereon, under the hand of such person, and of his assignees, in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof in each and every assignee successively. [See "R. R. and W." ch. 114, § 142. R. S. 1845, p. 384, § 4. *Palmer v. Gardiner et al.*, 77 Ill., 143; *Dempster v. West*, 69 Ill., 613; *Kingsbury v. Wall*, 68 Ill., 311; *Newell v. School Directors*, 68 Ill., 514; *Badgley v. Votrain*, 68 Ill., 25; *Padfield v. Padfield*, 68 Ill., 210.

5. § 5. Any assignee to whom such sum of money or personal property is, by such indorsement or indorsements, made payable, or in case of the death of such assignee, his executor or administrator, may, in his own name, institute and maintain the same kind of action for the recovery thereof, against the person who made and executed any such note, bond, bill or other instrument in writing, or against his heirs, executors or administrators, as might have been maintained against him by the obligee or payee, in case the same had not been assigned;

and in every such action, in which judgment shall be given for the plaintiff, he shall recover his damages and costs of suit, as in other cases. [R. S. 1845, p. 385, § 5. *White v. Smith*, 77 Ill., 351; *Best v. Nokomis National Bank*, 76 Ill., 609; *Stevenson v. O'Neil et al.*, 71 Ill., 314; *Belohradsky v. Kuhn*, 69 Ill., 547; *McFarland v. Dey*, 69 Ill., 419; *Thompson v. Shoemaker*, 68 Ill., 256.

6. § 6. No maker of any such note, bond, bill, or other instrument in writing, or other person liable thereon, shall be allowed to allege payment to the payee, made after notice of assignment, as a defense against the assignee. [R. S. 1845, p. 385, § 6.

7. § 1. The rights of the lawful holders of promissory notes payable in money and the liability of all parties to or upon said notes shall be the same as that of like parties to inland bills of exchange according to the custom of merchants. Every assignor of every other note, bond, bill or other instrument in writing mentioned in section III of this Act shall be liable to the action of the assignee or lawful holder thereof, if such assignee or lawful holder shall have used due diligence by the institution and prosecution of a suit against the maker thereof, for the recovery of the money or property due thereon, or damages in lieu thereof. But if the institution of such suit would have been unavailing, or the maker had absconded or resided without or had left the State when such instrument became due, such assignee or holder may recover against the assignor as if due diligence by suit had been used. [As amended by Act of June 4, 1895.

7a. § 2. Persons severally liable upon bills of exchange or promissory notes, payable in money, may all or any of them severally be included in the same suit at the option of the plaintiff, and judgment rendered in said suit shall be without prejudice to the rights of the several defendants as between themselves. [Added by Act of June 4, 1895.

7b. § 3. In any suit mentioned in the preceding section a separate judgment may be entered by default against any defendant or defendants severally liable who have been duly served with summons, and against whom the plaintiff would

have been entitled to judgment had the suit been against such defendant or defendants only. The suit shall thereby be severed, and shall proceed to trial against the other party or parties in the same manner as if (it) had been commenced against such other party or parties only, and if the plaintiff recover, judgment shall be entered against such one or more of the defendants as are found liable to him, but in no event shall the plaintiff be entitled to more than one satisfaction. [Added by Act of June 4, 1895.]

7c. § 4. Whenever the drawer or endorser of an accepted bill of exchange or the endorser or guarantor of a promissory note shall have been joined with the acceptor of said bill or the maker of said note in a suit to enforce the collection thereof, and judgment has been recovered against any such drawer, endorser or guarantor who shall thereafter pay the same, the person so paying shall be entitled to have the judgment released as to him, but the same shall, at his option, stand and may be enforced by execution under the order of the court against any other party thereto who remains liable to the party paying as upon said bill or note, for the reimbursement of the party so paying. If there be any contest as to such liability the court may order an issue to be made up between the contesting parties, which shall be summarily determined as the court may direct. [Added by Act of June 4, 1895.]

7d. § 5. In all suits on negotiable instruments where any of the defendants are jointly liable, and only one or more, but not all of them have been served with summons, if the plaintiff recover, judgment shall be entered in form against all the defendants so jointly liable, but so far only as that it may be enforced against the joint property of all and the separate property of the defendants served. [Added by Act of June 4, 1895.]

8. REPEALED. Sec. 196, Act of 1907.

9. § 9. In any action upon a note, bond, bill, or other instrument in writing, for the payment of money or property, or the performance of covenants or conditions, if such instrument was made or entered into without a good and valuable consideration, or, if the consideration upon which it was made or entered into has wholly or in part failed, it shall be lawful

for the defendant to plead such want of consideration, or that the consideration has wholly or in part failed; and if it shall appear that such instrument was made or entered into without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant; and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the equity of the case: *Provided*, that nothing in this section contained shall be construed to affect or impair the right of any *bona fide* assignee of any instrument made assignable by this Act, when such assignment was made before such instrument became due. [R. S. 1845, p. 385, § 10. *Sturges v. Miller et al.*, 80 Ill., 241; *Shreeves v. Allen*, 79 Ill., 553; *Winkelman v. Choteau et al.*, 78 Ill., 107; *Nowak v. Excelsior Stone Co.*, 78 Ill., 307; *Paton et al. v. Stewart*, 78 Ill., 481; *Holmes v. Shaver*, 78 Ill., 578; *Cheney v. City National Bank of Chicago*, 77 Ill., 562; *Mann v. Smyser et al.*, 76 Ill., 365; *Comstock et al. v. Hannah*, 76 Ill., 530; *Best v. Nokomis National Bank*, 76 Ill., 608.

10. § 10. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee of such instrument. [R. S. 1845, p. 386, § 11. *Champion v. Ulmer*, 70 Ill., 322; *Culver v. Hide & Leather Bk. of Chicago*, 78 Ill., 625; *Neil v. Cummings*, 75 Ill., 170.

11. § 11. If any such note, bond, bill or other instrument in writing shall be indorsed after the same becomes due, and any indorsee shall institute an action thereon against the maker of the same, the defendant being maker shall be allowed to set up the same defense that he might have done had the action been instituted in the name and for the use of the person to whom such instrument was originally made payable, or any intermediate holder. [R. S. 1845, p. 385, § 8. *Bissell v. Curran*, 69 Ill., 20.

12. § 12. In any action upon a note, bond, bill, or other in-

strument in writing, which has been assigned to or transferred by delivery to the plaintiff after it became due, a set-off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons who shall have assigned or transferred such instrument after it became due, if the demand be such as might have been set-off against the assignor, while the note or bill belonged to him.

13. § 13. If any such note, bond, bill, or other instrument of writing, shall be assigned before the day the money or property therein mentioned becomes due and payable, and the assignee shall institute an action thereon, the defendant may give in evidence at the trial any money or property actually paid on the said note, bond, bill, or other instrument in writing, before the said note, bond, bill, or other instrument in writing was assigned to the plaintiff, on proving that the plaintiff had sufficient notice of the said payment before he accepted or received such assignment. [R. S. 1845, p. 385, § 9. *Nowak v. Excelsior Stone Co.*, 78 Ill., 307.]

14. § 14. In any action founded upon any note, bond, bill, or other instrument in writing, or in which the same, if produced, might be allowed as a set-off in defense, if it shall appear that such instrument was lost while belonging to the party claiming the amount due thereon, to entitle him to recover upon or set-off the same, he may, in the discretion of the court, be required to execute a bond to the adverse party in a penalty at least double the amount of such note, bill or instrument, with sufficient security, to be approved by the court in which the action is pending, conditioned to indemnify the adverse party, his heirs, executors and administrators, against all claims by any other person on account of such instrument, and against all cost and expenses by reason thereof.

15. § 15. No promissory note, check, draft, bill of exchange, order or other negotiable or commercial instrument, shall be entitled to days of grace, but shall be absolutely payable at maturity. [As amended by Act approved June 4, 1895. In force July 1, 1895; L. 1895, p. 261.]

16. § 16. In all computations of time, and of interest and discounts, a month shall be considered to mean a calendar

month, and a year shall consist of twelve calendar months; and in computations of interest or discounts for any number of days less than a month, a day shall be considered a thirtieth part of a month and interest or discounts shall be computed for such fractional parts of a month upon the ratio which such number of days shall bear to thirty. [L. 1861, p. 119, § 3; L. 1865, p. 128, § 1.

17. § 17. The following days, to-wit: The first day of January, commonly called New Year's Day, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the twelfth day of October, commonly called Columbus day, the twenty-fifth day of December, commonly called Christmas day, the first Monday in September, to be known as Labor day, the twelfth day of February, any day appointed or recommended by the Governor of this State or by the President of the United States as a day of fast or thanksgiving, and in cities of 200,000 inhabitants or more, from 12 o'clock noon to 12 o'clock midnight of the last day of the week, commonly called Saturday, are hereby declared to be legal holidays and half holidays, the term half holidays including the period from noon to midnight of each Saturday which is not a holiday, and shall, for all purposes whatsoever, as regards the presenting for payment or acceptance, the maturity and protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes and other negotiable or commercial paper or instruments, be treated and is considered as is the first day of the week, commonly called Sunday. When any such holidays fall on Sunday, the Monday next following shall be held and considered such holiday. All notes, bills, drafts, checks, or other evidence of indebtedness, falling due or maturing on either of said days, shall be deemed as due or maturing upon the day following, and when two (2) or more of these days come together, or immediately succeeding each other, then such instruments, paper or indebtedness shall be deemed as due or having matured on the day following the last of such days. [As amended by Act of May 10, 1909.

18. § 1. *Be it enacted by the People of the State of Illinois*

*represented in the General Assembly:* That any time check or store order, issued or given as compensation for labor performed, shall be redeemable at the option of the person to whom the same was issued or given, or upon his written order, in bankable currency. Any person who violates this Act shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one hundred (100) dollars or confined in the county jail not to exceed thirty (30) days, or both, in the discretion of the court. [Act of June 21, 1895.]

# NEGOTIABLE INSTRUMENTS

ACT OF JUNE 5, 1907

[REVISED STATUTES, CHAPTER 98, PARAGRAPHS 19-214.]

## TITLE I. NEGOTIABLE INSTRUMENTS.

Art. I. §§ 1-23. Form and interpretation.

Art. II. §§ 24-29. Consideration.

Art. III. §§ 30-50. Negotiation.

Art. IV. §§ 51-59. Rights of the holder.

Art. V. §§ 60-69. Liabilities of parties.

Art. VI. §§ 70-87. Presentation for payment.

Art. VII. §§ 88-117. Notice of dishonor.

Art. VIII. §§ 118-124. Discharge of negotiable instruments.

## TITLE II. BILLS OF EXCHANGE.

Art. I. §§ 125-130. Form and interpretation.

Art. II. §§ 131-141. Acceptance.

Art. III. §§ 142-150. Presentation for payment.

Art. IV. §§ 151-159. Protest.

Art. V. §§ 160-169. Acceptance for honor.

Art. VI. §§ 170-176. Payment for honor.

Art. VII. §§ 177-182. Bills in a set.

## TITLE III. PROMISSORY NOTES AND CHECKS.

Art. I. §§ 183-188. Form, interpretation, acceptance, etc.

## TITLE IV. GENERAL PROVISIONS.

Art. I. §§ 189-196. Definitions, etc.—repeal.



AN ACT in regard to negotiable instruments payable in money.  
[Approved June 5, 1907.]

[TITLE I. NEGOTIABLE INSTRUMENTS.]

ARTICLE I—FORM AND INTERPRETATION

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* An instrument payable in money, to be negotiated, must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.
2. Must contain an unconditional promise or order to pay a sum certain in money.
3. Must be payable on demand or at a fixed or determinable future time.
4. Must be payable to the order of a specified person or to bearer; and,
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

§ 2. The sum payable is a sum certain within the meaning of this Act, although it is to be paid:

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment, or of interest the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

§ 3. An unqualified order or promise to pay is unconditional within the meaning of this Act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

§ 4. An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

§ 5. An instrument which contains an order or promise to do an act in addition to the payment of money is not negotiable under this Act. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment; or
3. Waives the benefit of any law intended for the advantage or protection of the obligator; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal or authorize the waiver of exemptions from execution.

§ 6. The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Is payable in currency or current funds; or designates a particular kind of current money in which payment is to be made.

§ 7. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

§ 8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or more of several payees; or
6. The holder of an office for the time being.

7. An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

§ 9. The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer;

or

3. When it is payable to the order of a person known by the drawer or maker to be fictitious or non-existent or of a living person not intended to have any interest in it; or

4. When the name of the payee does not purport to be the name of any person; or

5. When although originally payable to order, it is indorsed in blank by the payee or a subsequent endorsee.

§ 10. The negotiable instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof.

§ 11. When the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the

true date of the making, drawing, acceptance or indorsement, as the case may be.

§ 12. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

§ 13. When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course, but as to him, the date so inserted is to be regarded as the true date.

§ 14. Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is issued or negotiated to a holder in due course it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

§ 15. Every contract on a negotiable instrument if incomplete will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

§ 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due

course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

§ 17. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

4. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either, at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

§ 18. No person is liable on the instrument whose signature

does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name.

§ 19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

§ 20. Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of the principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as agent, or as filling a representative character without disclosing his principal, does not exempt him from personal liability.

§ 21. A signature by "procuration" operates as notice that the agent has but limited authority to sign, and the principal is bound in case the agent in so signing acted within the actual limits of his authority.

§ 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

§ 23. Where a signature is forged or made without authority it is wholly inoperative, and no right to retain the instrument or to give a discharge thereof, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

#### ARTICLE II—CONSIDERATION

§ 24. Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

§ 25. Value is any consideration sufficient to support a simple contract.

2. An antecedent or preëxisting claim, whether for money or

not, constitutes value where an instrument is taken either in satisfaction therefor (or) as security therefor and is deemed such, whether the instrument is payable on demand or at a future time.

§ 26. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

§ 27. Whether the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

§ 28. Absence or failure of consideration is a matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense *pro tanto*, whether the failure is an ascertained and liquidated amount or otherwise.

§ 29. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party and in case a transfer after maturity was intended by the accommodating party notwithstanding such holder acquired title after maturity.

#### ARTICLE III—NEGOTIATIONS

§ 30. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof; if payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, completed by delivery.

§ 31. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement and the addition of words of assignment or of guaranty shall not negative the additional effect of the signature as an indorsement unless otherwise expressly stated.

§ 32. The indorsement must be an indorsement of the en-

tire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

§ 33. An indorsement may be either in blank or special; and it may also be either restrictive or qualified, or conditional.

§ 34. A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

§ 35. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

§ 36. An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

§ 37. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument.
2. To bring any action thereon that the indorser could bring or except in the case of a restrictive indorsement specified in section 36—sub-section 2, any action against the indorser or any prior party that a special indorsee would be entitled to bring.
3. To transfer the instrument where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement specified in section 36—sub-section 1—and as against the principal or *cestue que* trust only the title of the first indorsee under the restrictive in-



dorsements specified in section 36—sub-sections 2 and 3 respectively.

§ 38. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

§ 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make a payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

§ 40. Where an instrument originally payable to or indorsed specifically to bearer is subsequently indorsed specially it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

§ 41. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others.

§ 42. Where an instrument is drawn or indorsed to a person, as "Cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

§ 43. Where the name of the payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

§ 44. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

§ 45. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

§ 46. Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

§ 47. An instrument negotiable in its origin continues to be negotiable until it has been respectively indorsed or discharged by payment or otherwise.

§ 48. The owner may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

§ 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, and the transferee vests in the transferee such title as the transferee had therein, and the transferee acquires, in addition, the right to enforce the instrument against one who signed for the accommodation of the transferer and the right to have the indorsement of the transferer if omitted by accident or mistake. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

§ 50. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, re-issue and further negotiate the same, but he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

#### ARTICLE IV—RIGHTS OF THE HOLDER

§ 51. The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

§ 52. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That the instrument is complete and regular upon its face.
2. That he became the holder of it before it was over due, and without notice that it has been previously dishonored, if such was the fact.
3. That he took it in good faith and for value.

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

§ 53. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

§ 54. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

§ 55. The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

§ 56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

§ 57. A holder in due course holds the instrument free from any defect of title or prior parties and free from defenses available to prior parties among themselves except the defect and defense specified in section 10 of Act entitled "An act to revise the law in relation to promissory notes, bonds, due bills and other instruments in writing," approved March 18, 1874, in force July 1, 1874, and except the defect and defense specified in sections 131 and 136 of an Act to revise the law in relation to criminal jurisprudence, approved March 27, 1874, in force July 1, 1874, known as sections 131 and 136 of chapter 38 of the Revised Statutes of Illinois, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

§ 58. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But the holder who derives his

title through a holder in due course, and who is not himself a party to any fraud or duress or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to such holder.

§ 59. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

#### ARTICLE V—LIABILITIES OF PARTIES

§ 60. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

§ 61. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

§ 62. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
2. The existence of the payee and his then capacity to indorse.

§ 63. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be

an indorser, unless he clearly indicated by appropriate words his intention to be bound in some other capacity.

§ 64. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is a note or bill, payable to the order of a third person or an accepted bill, payable to the order of the drawer, he is liable to the payee and to all subsequent parties.

2. If the instrument is a note or unaccepted bill payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

§ 65. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be.

2. That he has a good title to it.

3. That all prior parties had capacity to contract.

4. That he has no knowledge of any fact which would impair the validity of the instrument.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

§ 66. Every indorser not an accommodating party who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivision one, two, three and four of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, every indorser engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the

necessary proceedings on dishonor be duly taken he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

§ 67. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

§ 68. As respects one another, indorsers are liable *prima facie* in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. All parties jointly liable on a negotiable instrument are deemed to be jointly and severally liable.

§ 69. Where a broker or other agent negotiated an instrument without indorsement, he incurs all the liabilities prescribed by section sixty-five of this Act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

§ 69a. Whenever any bill of exchange drawn or indorsed within this State and payable without this State is duly protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay such bill at the current rate of exchange and with legal interest from the time such bill ought to have been paid until paid, together with the costs and charges of protest, and on bills payable in the United States in case suit has to be brought thereon and on bills payable without the United States with or without suit, five per cent damages in addition.

#### ARTICLE VI—PRESENTMENT FOR PAYMENT

§ 70. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument except in case of bank notes, but if the instrument is, by its terms, payable at a special place and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein

otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

§ 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

§ 72. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf.
2. At a reasonable hour on a business day.
3. At a proper place as herein defined.
4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

§ 73. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented.
2. Where no place of payment is specified and the address of the person to make the payment is given in the instrument and it is there presented.
3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.
4. In any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

§ 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

§ 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

§ 76. Where the person primarily liable on the instrument is

dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if with exercise of reasonable diligence, he can be found.

§ 77. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

§ 78. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

§ 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

§ 80. Presentment for payment is not required to charge an indorser where the instrument was made or accepted for his accommodation.

§ 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

§ 82. Presentment for payment is dispensed with:

1. When after the exercise of reasonable diligence presentment as required by this Act can not be made.
2. Where the drawee is a fictitious person.
3. By waiver of presentment, express or implied.

§ 83. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or can not be obtained; or
2. Presentment is excused and the instrument is overdue and unpaid.

§ 84. Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

§ 85. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls on Sun-



day, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12:00 o'clock noon on Saturday, when that entire day is not a holiday.

§ 86. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

§ 87. Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

#### ARTICLE VII—NOTICE OF DISHONOR

§ 88. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

§ 89. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

§ 90. Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

§ 91. Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

§ 92. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

§ 93. Where the instrument has been dishonored in the hands

of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

§ 94. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate unless the party to whom the notice is given is in fact misled thereby.

§ 95. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

§ 96. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

§ 97. Where any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

§ 98. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

§ 99. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

§ 100. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of his creditors, notice may be given either to the party himself or to his trustee or assignee.

§ 101. Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this Act.

§ 102. Where the person giving and the person to receive

notice reside in same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.
2. If given at his residence, it must be given before the usual hours of rest on the day following.
3. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following.

§ 103. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.
2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

§ 104. Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

§ 105. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

§ 106. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after dishonor.

§ 107. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letter; or
2. If he lives in one place and has his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirements of this section.

§ 108. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

§ 109. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

§ 110. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor.

§ 111. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

§ 112. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

§ 113. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person.
2. Where the drawee is a fictitious person or a person not having capacity to contract.
3. Where the drawer is the person to whom the instrument is presented for payment.
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.
5. Where the drawer has countermanded payment.

§ 114. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument.

2. Where the indorser is the person to whom the instrument is presented for payment.

3. Where the instrument was made or accepted for his accommodation.

§ 115. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

§ 116. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

§ 117. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required, except in the case of foreign bills of exchange.

#### ARTICLE VIII—DISCHARGE OF NEGOTIABLE INSTRUMENTS

§ 118. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.

2. By payment in due course by the party accommodated where the instrument is made or accepted for accommodation.

3. By the intentional cancellation thereof by the holder.

4. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

§ 119. A person secondarily liable on the instrument is discharged:

1. By an Act which discharges the instrument.

2. By the intentional cancellation of his signature by the holder.

3. By a valid tender of payment made by a prior party.

4. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved, or unless the principal debtor be an accommodating party.

5. By an agreement in favor of the principal debtor binding upon the holder to extend the time of payment, or to postpone

the holder's right to enforce the instrument, unless made with the assent prior or subsequent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved, or unless the principal debtor be an accommodating party.

§ 120. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

§ 121. The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

§ 122. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative: but where an instrument or any signature thereon appears to have been canceled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

§ 123. Where a negotiable instrument is fraudulently or materially altered by the holder without the assent of all the parties liable thereon, it is avoided except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

§ 124. Any alteration which changes:

1. The date.
2. The sum payable, either for principal or interest.
3. The time or place of payment.
4. The number and the relations of the parties.
5. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

## TITLE II—BILLS OF EXCHANGE

### ARTICLE I—FORM AND INTERPRETATION

§ 125. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer.

§ 126. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

§ 127. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

§ 128. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

§ 129. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or a promissory note.

§ 130. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the

referee in case of need. It is the option of the holder to resort to the referee in case of need, or not, as he may see fit.

## ARTICLE II—ACCEPTANCE

§ 131. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

§ 132. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused may treat the bill as dishonored.

§ 133. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person who, on the faith thereof, receives the bill for value.

§ 134. An unconditional promise in writing to accept a bill before or after it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

§ 135. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as the day of presentation.

§ 136. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment.

§ 137. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill payable accepted as of the date of the first presentment.

§ 138. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

§ 139. An acceptance to pay at a particular place is a general



acceptance unless it expressly states that the bill is to be paid there only, and not elsewhere.

§ 140. An acceptance is qualified which is:

1. Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.
2. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.
3. Local; that is to say, an acceptance to pay only at a particular place.
4. Qualified as to time.
5. The acceptance of some one or more of the drawees, but not of all.

§ 141. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

#### ARTICLE III—PRESENTMENT FOR ACCEPTANCE

§ 142. Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary, in order to fix the maturity of the instrument; or
2. Where the bill expressly stipulates that it shall be presented for acceptance; or
3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

§ 143. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be pre-

sented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

§ 144. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

§ 145. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 72 and 85 of this Act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12:00 o'clock noon on that day.

§ 146. Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

§ 147. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some ground.

§ 148. A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this Act is refused or can not be obtained: or
2. When a presentment for acceptance is excused and the bill is not accepted.

§ 149. Where a bill is duly presented for acceptance and is not presented within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance, or he loses the right of recourse against the drawer and indorsers.

§ 150. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holders, and no presentment for payment is necessary.

#### ARTICLE IV—PROTEST

§ 151. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof, in case of dishonor, is unnecessary.

§ 152. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it and must specify:

1. The time and place of presentment.
2. The fact that presentment was made and the manner thereof.
3. The cause or reason for protesting the bill.
4. The demand made and the answer given, if any, of the fact that the drawee or acceptor could not be found.

§ 153. Protest may be made by:

1. A notary public; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

§ 154. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

§ 155. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable; and no other presentment for payment to, or demand on, the drawee is necessary.

§ 156. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

§ 157. When the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

§ 158. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

§ 159. Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

#### ARTICLE V—ACCEPTANCE FOR HONOR

§ 160. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon, may with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an

acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party.

§ 161. An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

§ 162. Where an acceptance for honor does not expressly state for whose honor it was made, it is deemed to be an acceptance for the honor of the drawer.

§ 163. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

§ 164. The acceptor for honor by such acceptance engages that he will, on due presentment, pay the bill according to the terms of his acceptance: *Provided*, it shall not have been paid by the drawee; *And provided, also*, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

§ 165. When a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

§ 166. Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

§ 167. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 103.

§ 168. The provisions of section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

§ 169. When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.

## ARTICLE VI—PAYMENT FOR HONOR

§ 170. Where a bill has been accepted for non-payment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

§ 171. The payment for honor *supra* protest in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

§ 172. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

§ 173. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

§ 174. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

§ 175. Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

§ 176. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

## ARTICLE VII—BILLS IN A SET

§ 177. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to other parts, the whole of the parts constitute one bill.

§ 178. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill.

But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

§ 179. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

§ 180. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

§ 181. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

§ 182. Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

### TITLE III—PROMISSORY NOTES AND CHECKS

#### ARTICLE I

§ 183. A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

§ 184. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act [which] are applicable to a bill of exchange payable on demand apply to a check.

§ 185. A check must be presented for payment within a reasonable time after its issue, and notice of dishonor given to the drawer as provided for in the case of bills of exchange, or the

drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

§ 186. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

§ 187. Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

§ 188. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

#### TITLE IV—GENERAL PROVISIONS

##### ARTICLE I

§ 189. This Act shall be known as the Negotiable Instrument Law.

§ 190. In this Act, unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.



"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

§ 191. The person "primarily" liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are "secondarily" liable.

§ 192. In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

§ 193. Where the day, or the last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

§ 194. The provisions of this Act do not apply to negotiable instruments made and delivered prior to the passage hereof.

§ 195. In any case not provided for in this Act, the rules of the law merchant shall govern.

§ 196. Sections 1, 2 and 8 of an Act entitled, "An Act to revise the law in relation to promissory notes, bonds, due bills and other instruments in writing," approved March 18, 1874, in force July 1, 1874, and sections 10 and 11 of an Act entitled, "An Act to provide for the appointment, qualification and duties of notaries public and certifying their official acts," approved April 5, 1872, in force July 1, 1872, are hereby repealed.

## OTHER PROVISIONS

### ASSIGNMENT OF NOTES SECURED BY CHATTEL MORTGAGE

[REVISED STATUTES, CHAPTER 95, PARAGRAPHS 25, 26]

*AN ACT to regulate the assignment of notes secured by chattel mortgages and to regulate the sale of property under the power of sale contained in chattel mortgages. [Approved June 21, 1895.]*

FORM OF NOTE—DEFENSES.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all notes secured by chattel mortgages shall state upon their face that they are so secured, and when assigned by the payee therein named, shall be subject to all defenses existing between the payee and the payor of said notes the same as if said notes were held by the payee therein named, and any chattel mortgage securing notes which do not state upon their face the fact of such security shall be absolutely void.

SALE UNDER MORTGAGE PROCEDURE.] § 2. That all sales of personal property under the power of sale contained in any chattel mortgage shall be made in the county where the mortgagor resides or where the property is situated when mortgaged. If there are more than one mortgagor, then in the county where the mortgagor in possession of the property resides at the time of taking possession by the mortgagee, and in every case where the mortgagor can be found or his or her postoffice address can be ascertained, notice of the time and place of said sale shall be given to one or more of the mortgagors three days prior to said sale and by posting a copy of said notice at the place where said goods secured by said mortgage are located at least three days prior to said sale, and upon the making of said sale the mortgagee shall make out a statement showing the items of personal property sold, the names of each purchaser and the amount for which each article sold, and also an itemized state-

ment of the necessary reasonable expenses incurred in taking, keeping and selling said property, and shall deliver the same to the mortgagor or some one of them in person or by mail, and if he fails so to do within ten days after said sale, the owner of said property may sue for and recover one-third of the value of the property so sold from the mortgagee, or person making said sale as assignee of said mortgage: *Provided*, that nothing in this Act shall apply to the sale of furniture by regular dealers on the so-called installment plan.

#### GARNISHMENT: ACT OF MARCH 9, 1872

[REVISED STATUTES, CHAPTER 62, PARAGRAPH 15]

NEGOTIABLE PAPER.] § 15. No person shall be liable as a garnishee by reason of having drawn, accepted, made or indorsed any negotiable instrument, when the same is not due, in the hands of the defendant at the time of service of the garnishee, summons, or the rendition of the judgment. [Warne et al. v. Kendall, 78 Ill., 598.]

#### GAMING: ACT OF MARCH 27, 1874

[REVISED STATUTES, CHAPTER 38, PARAGRAPH 131]

GAMING CONTRACTS.] § 131. All promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or other securities or conveyances made, given, granted, drawn or entered into, or executed by any person whatsoever, where the whole or any part of the consideration thereof, shall be for any money, property or other valuable thing, won by any gaming, or playing at cards, dice, or any other game or games, or by betting on the side or hands of any person gaming, or by wager or bet upon any race, fight, pastime, sport, lot chance, casualty, election or unknown or contingent event whatever, or for the reimbursing or paying any money or property knowingly lent or advanced at the time and place of such play or bet, to any person or persons so gaming or betting, or that shall, during such

play or betting, so play or bet, shall be void and of no effect. [R. S. 1845, p. 263, § 1. Merchants' Savings Loan & Trust Co. v. Goodrich, 75 Ill., 554.]

LIMITATIONS: ACT OF APRIL 4, 1872

[REVISED STATUTES, CHAPTER 83, PARAGRAPHS 16 AND 17]

ON WRITINGS—NEW CONTRACT.] § 16. Actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing, shall be commenced within ten years next after the cause of action accrued; but if any payment or new promise to pay shall have been made, in writing, on any bond, note, bill, lease, contract, or other written evidence of indebtedness, within or after the said period of ten years, then an action may be commenced thereon at any time within ten years after the time of such payment or promise to pay. [R. S. 1845, p. 349, § 4; 2d L. 1849, p. 44, § 1.]

SET-OFF OR COUNTER CLAIM.] § 17. A defendant may plead a set-off or counter claim barred by the statute of limitation, while held and owned by him, to any action, the cause of which was owned by the plaintiff or person under whom he claims, before such set-off or counter claim was so barred, and not otherwise: *Provided*, this section shall not affect the right of a *bona fide* assignee of a negotiable instrument assigned before due.

NOTES FOR PAYMENT OF PROPERTY OTHER THAN MONEY

[REVISED STATUTES, CHAPTER 135, PARAGRAPHS 1 AND 2]

AN ACT to revise the law in relation to tender. [Approved March 7, 1874.]

TENDER OF PERSONAL PROPERTY.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That when any note, bond, bill or other instrument in

writing is for the payment or delivery of personal property other than money, and no particular place is specified therein for such payment or delivery, the maker may tender such personal property on the day of payment or delivery, at the place where the obligee or payee resided or had his place of business at the time of the execution of the instrument. If such personal property is too ponderous to be easily moved, or the obligee or payee had not, at the time of the execution of such instrument, a known place of residence or business in the county where the maker resided, or had his place of business, then tender may be made at the place where the maker resided or had his place of business at the time of the execution of the instrument. A tender made in pursuance of this section shall be equally valid, in case the instrument is assigned, as if no assignment had been made. [R. S. 1845, p. 386, § 12.]

EFFECT OF SUCH TENDER—PERISHABLE PROPERTY, ETC.] § 2. A legal tender of any such personal property shall discharge the maker of any such instrument from all liability thereon; and the property thus tendered shall be vested in the legal holder of the instrument, and he may maintain an action for the recovery thereof, or for damages if the possession be subsequently illegally withheld from him: *Provided, however*, if any such property so tendered shall be of a perishable nature, or shall require feeding or other sustentation, and the holder of such instrument be absent at the time of the tender, it shall be lawful for the person making the tender to preserve, feed and otherwise take care of the same, and he shall have a lien on such tendered property for his reasonable trouble, and the expense of feeding or sustaining such property, until payment be made, for such trouble and expense. [R. S. 1845, p. 386, § 13.]

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For "BILLS OF LADING," see Laws 1911, p. 227, R. S. chapter 27, paragraphs 2-57.

For "WAREHOUSE RECEIPTS," see Laws 1907, p. 477, R. S. chapter 114, paragraphs 241-300.

Concerning "ISSUES BY PUBLIC UTILITIES," see Laws 1913, p. 470, R. S. chapter 111a, paragraphs 20-31.

Concerning "ISSUES BY MUNICIPALITIES FOR THE PURPOSE OF ACQUIRING A PUBLIC UTILITY," see Laws 1913, p. 456, R. S. chapter 111a, paragraphs 94-95.

"NOTES SECURED BY WAGE ASSIGNMENTS," see Laws 1913, p. 199, R. S. chapter 32, sections 218-230.



APPENDIX II

NEGOTIABLE INSTRUMENT LAW OF  
WISCONSIN

The Negotiable Instrument Law of Wisconsin. Chapter 356, Laws of 1899, as amended by Ch. 268, 1901, Ch. 438, 1903, and Ch. 262, 1905. PUBLISHED UNDER DIRECTION OF J. A. Frear, Secretary of State, Madison, Wisconsin. DEMOCRAT PRINTING COMPANY, STATE PRINTER, 1908.





## NEGOTIABLE INSTRUMENT LAW

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No. 153, A.]

[Published May 15, 1899.]

### CHAPTER 356 \*

\* This chapter is amended by Ch. 268, 1901, and Ch. 438, 1903, which add three new sections, 1675—1a to 1675—c, inclusive, and by Ch. 262, 1905, which adds Sec. 1675—24.

AN ACT relating to negotiable instruments and to establish a law uniform with such other states as have adopted or shall adopt like provisions, and amendatory of chapter 78 of the Wisconsin statutes of 1898.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

Section 1. Chapter seventy-eight of the Wisconsin statutes of 1898 is hereby amended so as to read as follows:

### GENERAL PROVISIONS

**Terms defined.**—Section 1675. In this chapter unless the context otherwise requires,—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay same. All other parties are "secondarily" liable.

**"Reasonable" or "unreasonable times."**—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the passage hereof.

In any case not provided for in this chapter the rules of the law merchant shall govern.

## NEGOTIABLE INSTRUMENTS IN GENERAL

### FORM AND INTERPRETATION

**When instrument is negotiable.**—Section 1675—1. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.

2. Must contain an unconditional promise or order to pay a sum certain in money.
3. Must be payable on demand or at a fixed or determinable future time.
4. Must be payable to order or to bearer.
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

**Orders of municipalities.**—But no order drawn upon or accepted by the treasurer of any county, town, city, village or school district, whether drawn by any officer thereof or any other person, and no obligation nor instrument made by any such corporation or any officer thereof, unless expressly authorized by law to be made negotiable, shall be, or shall be deemed to be, negotiable according to the custom of merchants, in whatever form they may be drawn or made.

**Warehouse receipts.**—Warehouse receipts, bills of lading and railroad receipts upon the face of which the words "not negotiable" shall not be plainly written, printed or stamped, shall be negotiable as provided in section 1676 of the Wisconsin Statutes of 1878, and in section 4194 and 4425 of these statutes, as the same have been construed by the supreme court.

**Words to be printed on face of note, when.**—Section 1675.—1a. (Sec. 1, ch. 268, 1901, and sec. 1, ch. 438, 1903.) All promissory notes and other evidences of indebtedness, taken or given for any lightning rod, patent, patent right, stallion, or interest therein as the case may be, shall have written or printed thereon in red ink the words: "The consideration for this note is the sale of a lightning rod, patent, patent right, stallion or interest therein, as the case may be."

**Penalty for taking note without statement required.**—Section 1675—1. (Sec. 1, ch. 268, 1901, and sec. 2, ch. 438, 1903.) Any person who shall sell a lightning rod, patent, patent right or stallion, or any interest in a lightning rod, patent, patent right,

or stallion, who shall take a promissory note or other evidence of indebtedness for the whole or any part of the consideration thereof, and who shall fail to state the consideration for said note as provided by section 1 of this act, or in words of similar import, shall be liable to a penalty equal to the face of the note so taken.

**Notes taken for patent, etc., non-negotiable; innocent holder.** Section 1675—1c. (Sec. 3, ch. 268, 1901, and sec. 3, ch. 438, 1903.) All notes or other evidences of indebtedness taken as a whole or a part of the consideration for any lightning rod, patent, patent right, stallion, or interest therein, which shall express upon their face the consideration for which they are taken, as required by section 1 of this act, shall be non-negotiable, and be subject to all the defenses in the hands of an innocent holder that the same would have if not transferred.

**Sum payable, defined.**—Section 1675—2. The sum payable is a sum certain within the meaning of this chapter, although it is to be paid:—

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default of payment of any installment or of interest, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

**Unqualified order or promise.**—Section 1675—3. An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:—

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

**Determinable future time.**—Section 1675—4. An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:—

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.
4. At a fixed period after date or sight, though payable before then on a contingency. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, except as herein provided.

**Negotiable character not affected.**—Section 1675—5. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:—

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity;
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal or authorize the waiver of exemptions from execution.

**Validity and negotiability not affected, when.**—Section 1675—6. The validity and negotiable character of an instrument are not affected by the fact that:—

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designate a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

**Payable on demand, when.**—Section 1675—7. An instrument is payable on demand:—

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed, when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

**Payable to order, when.**—Section 1675—8. The instrument is payable to order where it is drawn payable to the order of a specified person, or to him or his order. It may be drawn payable to the order of:—

1. A payee who is not maker, drawer, or drawee; or

2. The drawer or maker; or

3. The drawee; or

4. Two or more payees jointly; or

5. One or some of several payees; or

6. The holder of an office for the time being. Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

**Payable to bearer, when.**—Section 1675—9. The instrument is payable to bearer:—

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer; or

3. When it is payable to the order of a fictitious or non-exist-

ing person, and such fact was known to the person making it so payable; or

4. When the name of the payee does not purport to be the name of any person; or

5. When the only or last indorsement is an indorsement in blank.

**Effect of memoranda on instrument.**—Section 1675—10. The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. Memoranda upon the face or back of the instrument, whether signed or not, material to the contract, if made at the time of delivery, are part of the instrument, and parol evidence is admissible to show the circumstances under which they were made.

**Date prima facie evidence.**—Section 1675—11. Where the instrument or an acceptance of any endorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

**Ante or post dating.**—Section 1675—12. The instrument is not invalid for the reason that it is ante-dated or post-dated, provided that this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

**Undated instruments.**—Section 1675—13. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

**Uncompleted instruments.**—Section 1675—14. Where the in-



strument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it prior to negotiation by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as an authority to fill it up as such for any amount. In order, however, that any such instrument when complete may be enforced against any person who became a party thereto prior to completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

**Incomplete instruments completed without authority.**—Section 1675—15. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before negotiation.

**Contracts on negotiable paper, when incomplete.**—Section 1675—16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and

intentional delivery by him is presumed until the contrary is proved.

**Construction of ambiguities.**—Section 1675—17. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:—

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon;

8. Where several writings are executed at or about the same time, as parts of the same transaction, intended to accomplish the same object, they may be construed as one and the same instrument as to all parties having notice thereof.

**Trade or assumed names.**—Section 1675—18. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one

who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name.

**Signature by agent.**—Section 1675—19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

**Agent not liable.**—Section 1675—20. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

**Signature by "procuration."**—Section 1675—21. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

**Indorsement by corporation or infant.**—Section 1675—22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

**Forgery.**—Section 1675—23. Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

**Bank, forged check; limitation.**—Section 1675—24 (Ch. 262, 1905). No bank shall be liable to any depositor for the payment by it of a forged or raised check unless action therefor shall be brought against such bank within one year after the return to the depositor by such bank of the check so forged or raised as a voucher.

#### CONSIDERATION

**Presumptions.**—Section 1675—50. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

**Value, defined.**—Section 1675—51. Value is any consideration sufficient to support a simple contract. An antecedent or preëxisting debt, discharged, extinguished or extended, constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. But the indorsement or delivery of negotiable paper as collateral security for a preëxisting debt, without other consideration, and not in pursuance of an agreement at the time of delivery, by the maker, does not constitute value.

**Value presumed.**—Section 1675—52. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

**When holder has lien.**—Section 1675—53. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

**Absence of consideration matter of defense.**—Section 1675—54. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial fail-

ure of consideration is a defense *pro tanto*, whether the failure is an ascertained and liquidated amount or otherwise.

**Accommodation party defined.**—Section 1675—55. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

#### NEGOTIATION

**Instrument, when negotiated.**—Section 1676. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

**Indorsement, what is.**—Section 1676—1. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

**Indorsement is entire.**—Section 1676—2. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsee severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

**Special or blank indorsement.**—Section 1676—3. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

**What special or blank indorsement.**—Section 1676—4. A

special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

**Conversion of blank into special indorsement.**—Section 1676—5. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

**Restrictive indorsement.**—Section 1676—6. An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Section 1676—7. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;
2. To bring any action thereon that the indorser could bring;
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

**Qualified indorsement.**—Section 1676—8. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

**Conditional indorsement.**—Section 1676—9. Where an indorsement is conditional, a party required to pay the instrument

may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so endorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

**Indorsements of instruments payable to bearer.**—Section 1676—10. Where an instrument, payable to bearer, is endorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

**Instruments payable to two or more persons.**—Section 1676—11. Where an instrument is payable to the order of two or more payees or joint indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

**When drawn to fiscal officer.**—Section 1676—12. Where an instrument is drawn or indorsed to a person as “cashier” or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

**Misspelled names.**—Section 1676—13. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

**Negative personal liability.**—Section 1676—14. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

**Prima facie evidence of negotiation.**—Section 1676—15. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

**Presumption.**—Section 1676—16. Except where the contrary appears every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

**Length of negotiability.**—Section 1676—17. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

**Erasing indorsements.**—Section 1676—18. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him are thereby relieved from liability on the instrument.

**Transfer without indorsements; subsequent indorsement.**—Section 1676—19. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. When the indorsement was omitted by mistake, or there was an agreement to endorse made at the time of the transfer, the indorsement, when made, relates back to the time of transfer.

**Re-issue by prior party.**—Section 1676—20. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, re-issue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

#### RIGHTS OF THE HOLDER

**Holder may sue.**—Section 1676—21. The holder of a negotiable instrument may sue thereon in his own name; and



payment to him in due course discharges the instrument.

**Holder in due course.**—Section 1676—22. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
3. That he took it in good faith and for value.
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.
5. That he took it in the usual course of business.

**When not a holder in due course.**—Section 1676—23. Where an instrument payable on demand is negotiated at an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

**Notice of infirmity in the instrument.**—Section 1676—24. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating it, the same before he has paid therefor the full amount agreed to be paid, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

**Defective title.**—Section 1676—25. The title of a person who negotiates an instrument is defective within the meaning of this act when he obtains the instrument, or any signature thereon, by fraud, duress, or force or fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud; and the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care.

**Actual knowledge of infirmity necessary to notice.**—Section 1676—26. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

**Rights of holder in due course; insurance premiums; fraud.**—Section 1676—27. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves and may enforce payment of the instrument for the full amount thereof against all parties liable thereon except as provided in sections 1944 and 1945 of these statutes, relating to insurance premiums, and also in cases where the title of the person negotiating such instrument is void under the provisions of section 1676—25 of this act.

**Holder, other than in due course.**—Section 1676—28. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud, duress or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to such holder.

**Burden of proof as to title.**—Section 1676—29. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.



drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he sign for the accommodation of the payee, he is liable to all parties subsequent to the payee.

**Warranty.**—Section 1677—5. Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

1. That the instrument is genuine and in all respects what it purports to be.
2. That he has good title to it.
3. That all prior parties had capacity to contract;
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

**Warranty of indorser without qualification.**—Section 1677—6. Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivisions one, two and three of the next preceding section; and,
2. That the instrument is at the time of his indorsement valid and subsisting.

And in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it is dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

**Indorsement of instrument negotiable by delivery.**—Section 1677—7. When a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

**Indorsers liable in order of indorsement.**—Section 1677—8. As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

**Negotiation without indorsement by broker.**—Section 1677—9. When a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 1677—5, unless he discloses the name of his principal, and the fact that he is acting only as an agent.

#### PRESENTMENT FOR PAYMENT

**Presentment when necessary.**—Section 1678. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

**Instruments payable on demand.**—Section 1678—1. Where the instrument is not payable on demand presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

**Sufficient presentment.**—Section 1678—2. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;
2. At a reasonable hour on a business day;
3. At a proper place as herein defined;
4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

**Presentment at proper place.**—Section 1678—3. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;
2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;
3. Where no place of payment is specified, and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

**Exhibition of instrument.**—Section 1678—4. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

**During banking hours.**—Section 1678—5. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

**In case of death.**—Section 1678—6. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found.

**Partners.**—Section 1678—7. Where the persons primarily liable on the instrument are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

**Joint debtors.**—Section 1678—8. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

**In order to charge drawer.**—Section 1678—9. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

**In order to charge indorser.**—Section 1678—10. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

**Delay, when excused.**—Section 1678—11. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

**When dispensed with.**—Section 1678—12. Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this chapter cannot be made.
2. Where the drawee is a fictitious person;
3. By waiver of presentment express or implied.

#### DISHONOR

**By non-payment.**—Section 1678—13. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or,
2. Presentment is excused and the instrument is overdue and unpaid.

**Right of recourse of holder.**—Section 1678—14. Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.

**Without grace—maturity.**—Section 1678—15. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon a Sunday, or a holiday, the instrument is payable on the next succeeding business day.

**Time of payment.**—Section 1678—16. Where the instrument is payable at a fixed period after date, after sight or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of the payment.

**At a bank.**—Section 1678—17. Where the instrument is made payable at a bank it is an equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

**Payment in due course.**—Section 1678—18. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

#### NOTICE OF DISHONOR

**Notice, how given.**—Section 1678—19. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

**Who may give.**—Section 1678—20. The notice may be given by or on behalf of the holder, or by or on behalf of any party



to the instrument who might be compelled to pay it to the holder, and who, taking it up, would have a right to reimbursement from the party to whom the notice is given.

**By agent.**—Section 1678—21. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

**Subsequent holder.**—Section 1678—22. Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

**Notice on behalf of entitled party.**—Section 1678—23. Where notice is given by or on behalf of a party entitled to give notice it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

**In hands of an agent.**—Section 1678—24. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

**Character of notice.**—Section 1678—25. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

**Written notice.**—Section 1678—26. A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescrip-

tion of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

**To whom given.**—Section 1678—27. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

**Deceased party.**—Section 1678—28. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

**Partners.**—Section 1678—29. Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

**Joint parties.**—Section 1678—30. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

**Bankrupt.**—Section 1678—31. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustees or assignee.

**When given.**—Section 1678—32. Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter.

**Where parties reside in same place.**—Section 1678—33. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive

notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following.

**Where parties reside in different places.**—Section 1678—34. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last sub-division.

**By mail.**—Section 1678—35. Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

**When mailed.**—Section 1678—36. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

**Notice to antecedent parties.**—Section 1678—37. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

**Where to be sent.**—Section 1678—38. Where a party has added an address to his signature, notice of dishonor must be

sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

**Waiver of notice.**—Section 1678—39. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

**Waiver in instrument.**—Section 1678—40. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

**Waiver of protest.**—Section 1678—41. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

**Notice, when dispensed with.**—Section 1678—42. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

**Delay, when excused.**—Section 1678—43. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of

delay ceases to operate, notice must be given with reasonable diligence.

**Notice to drawer, when not required.**—Section 1678—44. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;
2. Where the drawee is a fictitious person or a person not having capacity to contract.
3. Where the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. Where the drawer has countermanded payment.

**Notice to indorser, when not required.**—Section 1678—45. Notice of dishonor is not required to be given to an indorser in either of the following cases:—

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
2. Where the indorser is the person to whom the instrument is presented for payment;
3. Where the instrument was made or accepted for his accommodation.

**Of subsequent dishonor.**—Section 1678—46. Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

**Omission to give notice.**—Section 1678—47. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission, but this shall not be construed to revive any liability discharge by such omission.

**Protest.**—Section 1678—48. Where any negotiable instru-

ment has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

#### DISCHARGE OF NEGOTIABLE INSTRUMENTS

**When discharged.**—Section 1679. A negotiable instrument is discharged:

1. By the payment in due course by or on behalf of the principal debtor;
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
3. By the intentional cancellation thereof by the holder;
4. By any other act which will discharge a simple contract for the payment of money;
5. Where the principal debtor becomes the holder of the instrument at or after maturity in his own right.

**Discharge from secondary liability.**—Section 1679—1. A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;
2. By the intentional cancellation of his signature by the holder;
3. By the discharge of a prior party;
4. By a valid tender of payment made by a prior party;
- 4a. By giving up or applying to other purposes collateral security applicable to the debt, or, there being in the holder's hands or within his control the means of complete or partial satisfaction, the same are applied to other purposes.
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
6. By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument unless made with the assent, prior or subsequent, of the party secondarily liable, unless the right of recourse against such party is expressly reserved, or unless he is fully indemnified.

**When paid by secondary party.**—Section 1679—2. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and
2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

**Renunciation of rights.**—Section 1679—3. The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

**Cancellation by mistake.**—Section 1679—4. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

**Altering of instrument.**—Section 1679—5. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented, orally or in writing, to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

**Material alteration.**—Section 1679—6. Any alteration which changes:

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relation of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

## BILLS OF EXCHANGE

### FORM AND INTERPRETATION

**What is bill of exchange.**—Section 1680. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or bearer.

**Not an assignment of funds.**—Section 1680a. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same.

**Address of bill.**—Section 1680b. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative.

**Inland and foreign bill.**—Section 1680c. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

**Where drawer and drawee are same person.**—Section 1680d.



Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, not having capacity, to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

**Referee in case of need.**—Section 1680e. The drawer of a bill and any indorser may insert thereon the name of the person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

#### ACCEPTANCE

**Acceptance of bill.**—Section 1680f. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawer. It must not express that the drawee will perform his promise by any other means than the payment of money.

**Acceptance in writing.**—Section 1680g. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and if such request is refused, may treat the bill as dishonored.

**Written acceptance on paper other than bill.**—Section 1680h. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

**Promise in writing.**—Section 1680i. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

**Time allowed for acceptance.**—Section 1680j. The drawee is

allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

**Refusal or failure to return.**—Section 1680k. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same. Mere retention of the bill is not acceptance.

**Acceptance before signing.**—Section 1680l. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

**General or qualified acceptance.**—Section 1680m. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

**General acceptance.**—Section 1680n. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

**Qualified acceptance.**—Section 1680 o. An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, acceptance to pay only at a particular place;
4. Qualified as to time.
5. The acceptance of some one or more of the drawees, but not of all.

**Refusal of qualified acceptance.**—Section 168op. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or indorser receive notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

#### PRESENTMENT FOR ACCEPTANCE

**Where made.**—Section 168i. Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
2. Where the bill expressly stipulates that it shall be presented for acceptance, or
3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

**Failure to present or negotiate.**—Section 168i—1. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged.

**When and where to be made.**—Section 1681—2. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawer or some person authorized to accept or refuse acceptance on his behalf; and

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

**Presentment of bill.**—Section 1681—3. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 1678—2 and 1678—15.

**Delay, when excusable.**—Section 1681—4. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

**Presentment, when excused.**—Section 1681—5. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:—

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

**When dishonored.**—Section 1681—6. A bill is dishonored by non-acceptance,—

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

**Recourse, when lost.**—Section 1681—7. When a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

**When recourse accrues.**—Section 1681—8. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

#### PROTEST

**As to foreign bill.**—Section 1681—9. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

Every notary public, when any bill of exchange or promissory note shall be by him protested for non-acceptance or non-payment, shall give notice thereof in writing to the drawer, maker and each indorser of such bill of exchange or promissory note; he shall also thereupon make a certificate under his hand and official seal, setting forth the presentment, demand, refusal and protest thereof for non-acceptance or non-payment, the con-

tents of the notice given, and the time and manner of service thereof, specifying the postoffice and reputed place of residence of each person notified by mail; he shall also thereupon make and keep a record of such certificate and of the description of the instrument protested; and such certificate or such record, or a certified copy thereof, shall be presumptive evidence of the facts therein stated. The want of such certificate or record, or both, shall not invalidate any such protest or notice, but the same may be proved by any other competent evidence.

**Specifications of protest.**—Section 1681—10. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

**How made.**—Section 1681—11. Protest may be made by,—

1. A notary public; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

**When made.**—Section 1681—12. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

**Where made.**—Section 1681—13. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is

expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

**For non-payment.**—Section 1681—14. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

**When acceptor a bankrupt.**—Section 1681—15. Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

**When dispensed with.**—Section 1681—16. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

**Lost bill.**—Section 1681—17. Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

#### ACCEPTANCE FOR HONOR

**Acceptance supra protest, for honor.**—Section 1681—18. Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

**To be in writing.**—Section 1681—19. An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

**For drawer, when.**—Section 1681—20. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

**Liability of acceptor.**—Section 1681—21. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

**Engagement of acceptor for honor.**—Section 1681—22. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

**Bill payable after sight.**—Section 1681—23. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

**Acceptance of dishonored bill.**—Section 1681—24. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

**Presentment to acceptor, how made.**—Section 1681—25. Presentment for payment to the acceptor for honor must be made as follows:—

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.



2. If it is to be presented in some other place, than the place where it was protested, then it must be forwarded within the time specified in section 1678—34.

Section 1681—26. The provisions of section 1678—11 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Section 1681—27. When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

#### PAYMENT FOR HONOR

**Payment supra protest.**—Section 1681—28. Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon for the honor of the person for whose account it was drawn.

**Notarial act of honor, when necessary.**—Section 1681—29. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

**Foundation of notarial act.**—Section 1681—30. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

**Different parties.**—Section 1681—31. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

**Bill paid for honor.**—Section 1681—32. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the

holder as regards the party for whose honor he pays and all parties liable to the latter.

**Holder's refusal, *supra* protest.**—Section 1681—33. Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

**Payer for honor.**—Section 1681—34. The payer for honor on paying to the holder the amount of the bill and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.

#### BILLS IN A SET

**When one bill.**—Section 1681—35. Where a bill is drawn in a set, each part of a set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

**Where parts are negotiated.**—Section 1681—36. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

**Indorsement to different parties.**—Section 1681—37. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

**Acceptance on any part.**—Section 1681—38. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

**Liability of acceptor in paying part.**—Section 1681—39. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

**When whole bill is discharged.**—Section 1681—40. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

#### DAMAGES ON BILLS

**Rate of damages within state.**—Section 1682. Whenever any bill of exchange drawn or indorsed within this state and payable without the limits of the United States shall be duly protested for non-acceptance or non-payment the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand and damages at the rate of five per cent. on the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

**Rate of damages without state.**—Section 1683. If any bill of exchange drawn upon any person or corporation out of this state, but within some state or territory of the United States, for the payment of money shall be duly presented for acceptance or payment and protested for non-acceptance or non-payment the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay such bill with legal interest according to its tenor and five per cent. damages, together with costs and charges of protest.

#### PROMISSORY NOTES AND CHECKS

**Negotiable notes defined.**—Section 1684. A negotiable promissory note within the meaning of this act is an unconditional

promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

**Check.**—Section 1684—1. A check is a bill of exchange drawn on a bank, payable on demand. \*Except as herein otherwise provided the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

**Presentation of check.**—Section 1684—2. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

**Certified check.**—Section 1684—3. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

**Discharge of liability of drawer and indorsers.**—Section 1684—4. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

**Check not assignment funds.**—Section 1684—5. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

**Sections repealed.**—Section 1684—7. Sections 176, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, and 1684 of the statutes of 1898 are hereby repealed. Sections 1944, 1945, 4193, 4194, 4425 and 4458 of said statutes are not affected by this act, and nothing herein shall be deemed to repeal any part of such sec-

tions. All other provisions inconsistent with this chapter are repealed.

Section 3. This act shall take effect and be in force from and after its passage and publication.

Approved May 5, 1899.

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